No. 96-1581

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

STATE OF SOUTH DAKOTA,
Petitioner,
v.
YANKTON SIOUX TRIBE, a federally recognized tribe of Indians, and its individual members; DARRELL E. DRAPEAU, individually, a member of the Yankton Sioux Tribe,
Respondents,
and
SOUTHERN MISSOURI WASTE MANAGEMENT DISTRICT, a nonprofit corporation,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF OF RESPONDENT, SOUTHERN MISSOURI WASTE MANAGEMENT DISTRICT, IN SUPPORT OF PETITIONER, STATE OF SOUTH DAKOTA

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Respondent, Southern Missouri Waste Management District (District) in support of Petitioner, State of South Dakota (State), adopts the "Question Presented," "Opinions Below," "Jurisdictional Statement," and the "Constitutional and Statutory Provisions Involved" set forth in the Petition.[1] Sup. Ct. R. 12.6.

STATEMENT OF THE CASE

The District concurs in the "Statement of the Case" submitted by the State, but adds the following to illustrate the dramatic change in the status quo effected by the decisions below which hold that the Yankton Sioux Reservation has not been disestablished.

In late 1991 and early 1992, representatives of Charles Mix and Douglas counties, the Yankton Sioux Tribe (Tribe) and various municipalities began to meet in order to discuss significant new State and new federal regulatory criteria for solid waste landfills. T 573. The federal requirements, developed by the Environmental Protection Agency (EPA) pursuant to the Resource Conservation and Recovery Act (RCRA), amended existing rules to include new criteria for siting, designing and operating solid waste facilities. 40 CFR pt. 258.

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[1] The Office of the Clerk advised the District to bring the following facts to the attention of the Court in this fashion. The full and correct name of the District is Southern Missouri Recycling and Waste Management District. This entity was formed in August, 1994, and had begun functioning as a political subdivision of the State of South Dakota under South Dakota Codified Laws 34A-16-1, *et seq.* at the time this litigation was instituted. Plaintiff/Respondent Yankton Sioux Tribe (Tribe) presumably overlooked this fact when the complaint was filed against the initial non-profit corporation. In any event, the full and correct name of that non-profit corporation was Southern Missouri Waste Management Association, Inc.

In February, 1992, a non-profit entity entitled Southern Missouri Waste Management Association, Inc. was incorporated to deal with the challenge of the new requirements. District Court Opinion, (DCO), Pet. App. 90. According to the district court, "tribal members regularly attended Southern Missouri's meetings" although the Tribe "did not sign the joint powers agreement or become an official member of the organization." *Id.* Nonetheless, the testimony indicated that a tribal representative was a voting member of the District Board, T 581-582, 640-641 and that a tribal councilman occasionally attended. *Id.* at 640-641. A former chairman of the District perceived at the time that the Tribe was, in fact, a member. *Id.* at 640, 660. *See also id.* at 581.

The District aggressively sought out various sites for the landfill and, indeed, advertised in an effort to seek sellers of property. T 637-638. After conferences with its engineers, as well as the South Dakota Department of Environment and Natural Resources (DENR), the District selected as a site non-Indian fee land approximately one and one-half miles west of Lake Andes, South Dakota. The testimony at trial indicated that the tribal member present at the Southern Missouri meeting, voted in favor of the proposed site, or at least did not oppose the site. T 581-582, 589-590. The site selection was reviewed with the tribal chairman, who stated that he did not want the site on nearby trust land but made no objection to the site actually selected on the grounds that it was within a "reservation." T 636-637. The site was within the 1858 boundaries of the Yankton Sioux Reservation, a factor not deemed important or material at the time.

After a site characterization study was completed, the site was found to be environmentally suitable and the District submitted a formal request to DENR for a solid waste permit in order to construct and operate the landfill. DCO, Pet. App. 91. Further, at about the same time as the study was completed, the District approved membership in the District of two additional neighboring counties—

Gregory County, South Dakota and Bon Homme County, South Dakota. T 579-580. The greater size of the District promised to make the facility more affordable to the rural population it was meant to serve.

In the latter part of 1993, after a general tribal election and a change in the tribal administration, the attitude of the new leadership of the Tribe toward the merits of the landfill changed radically.[2] In early October, 1993, the Tribe petitioned to intervene in the contested case hearing procedure with regard to the landfill permit. The Tribe's Petition was granted, and the Tribe was allowed "party status" in the hearing. T 91.[3]

A four-day contested case hearing was held before the South Dakota Department of Minerals and Environment on December 8-10 and 20, 1993. DCO, Pet. App. 91. It is critical to note that at this time the Tribe opposed the landfill on environmental grounds but did *not* oppose it on jurisdictional grounds *nor* on the grounds that it was planned within a reservation. The colloquy between tribal chairman and the tribal attorney, in December of 1993, in fact, referred to "*former* boundaries" of the Reservation. According to the testimony:

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[2] Throughout the 1980's and the 1990's, voter participation in tribal elections fluctuated substantially. Sometimes fewer than 600 people participated in the tribal process. More recently, voter turnout has leveled out at around 1,000 (tribal voters need not reside in the area). In general, approximately 90% of the area within the 1858 boundaries is non-Indian owned and over two-thirds of the population is non-Indian.

[3] Consistent with RCRA's authority to delegate environmental programs to states (Subtitle D of RCRA) the State sought to implement the new requirements and therefore revised statutes and rules to do so. EPA generally approved the State's program on October 8, 1993, thereby authorizing the State to implement and enforce the requirements of 40 CFR pt. 258. Plaintiff's Exhibit 3. *See generally* T 573. In the same notice, EPA reserved the delegation question on "'existing or former' Indian reservations." 58 Fed. Reg. 52488 (Oct. 8, 1993).

> Q: (By Mr. Abourezk, the Tribe's Attorney): Are you familiar with the *former boundaries* before that area was opened up, of the Yankton Sioux Reservation?
>
> A: (By Tribal Chairman Drapeau): Yes.
>
> Q: Was that land within the *former boundaries* of the Yankton Sioux Reservation?
>
> A: Yes.

Ex. 675, Administrative Record before the South Dakota Board of Minerals and Environment, Drapeau Testimony at 556 (emphasis added).[4]

The Board granted the permit in December, 1993. Following the Board's decision, a second group represented by Mr. Abourezk (the Tribe's attorney) filed an appeal to state circuit court alleging an abuse of discretion on the part of the Board in granting the permit. *See* Pet. App. 93. No jurisdictional issue was raised. The Sixth Judicial Circuit Court for the State of South Dakota ultimately affirmed the Board decision, and no appeal was taken to the South Dakota Supreme Court. *Id.* The Tribe did not participate in the circuit court appeal.

Federal regulators continued to recognize that the original reservation had been disestablished well into 1994. Thus, on April 7, 1994, EPA issued its Tentative Determination, based on consultation with the Department of the Interior, on whether the State would be granted RCRA authority with regard to the former Yankton Reservation. According to EPA:

> On review of the arguments and consultation with the Department of the Interior, EPA believes that the State of South Dakota has sufficiently demonstrated that the Yankton Sioux Reservation was *disestablished* by the Act of 1894.

[4] The tribal chairman's subsequent effort to explain this testimony was unconvincing. T 306-313.

59 Fed. Reg. 16649 (April 7, 1994) (emphasis added).[5] The Tribe's arguments with regard to reservation status had thus been raised for the first time in the process before EPA.

Having failed to convince EPA and, apparently, the Department of the Interior, of the existence of the reservation, the Tribe, in September, 1994, filed a complaint in federal district court. In the complaint the Tribe alleged that the Yankton Sioux Reservation remained intact and had not been disestablished by the 1894 Act, *contrary* to nearly a century of state and federal precedent.

In essence, the Tribe contended that, based on the status of the area as a "reservation," the State did not have authority to issue the District a "Subtitle D" landfill permit and that the Tribe had jurisdiction over the site. At this point, the District sued the State, on a third party complaint, requiring it to defend its jurisdiction as to the solid waste permit that the District had obtained from the State. The State waived its Eleventh Amendment privilege and participated fully in all the proceedings at bar.

The district court, after trial, found that Congress had not disestablished or diminished the boundaries of the Yankton Reservation. Pet. App. 96. The district court additionally found that, in this instance, the Tribe had failed to demonstrate the existence of either of the Montana exceptions, *Montana v. United States*, 450 U.S. 544, 565-566 (1981), and so could not regulate the landfill itself.

The district court also found that, because EPA had not delegated federal authority to the State with regard to "Indian country" and because the proposed landfill was now newly defined as within "Indian country," EPA regulations applied. The district court found further that the

[5] EPA reversed its position with regard to reservation status only after the district court's decision. *See* 61 Fed. Reg. 48684-48685 (Sept. 16, 1996).

federal regulations required the installation of a very expensive (1.75 million dollars) "composite liner." *See* DCO Pet. App. 96.[6]

The State appealed the disestablishment/diminishment issue to the Eighth Circuit Court of Appeals. A divided panel affirmed the district court on this issue. *Yankton Sioux Tribe v. Southern Missouri Waste Management Dist.*, 99 F.3d 1439 (8th Cir. 1996). Pet. App. 1. (The District did not appeal because the district court allowed it to go forward with the construction of the proposed landfill facility.)[7]

Further, the decisions of the federal courts present a very difficult situation for the District. Both the State and the Tribe have applied for delegation of federal RCRA authority with regard to the area within the 1858 boundaries of the Yankton reservation. EPA denied RCRA authority delegation to the State after, and based upon, the district court decision. *See* 61 Fed. Reg. 48684-48685 (Sept. 16, 1996). Even though the Tribe has been found by the federal district court to *lack* the authority

[6] The District later petitioned EPA to waive the liner requirement. On June 6, 1996, EPA granted the District's petition. The District thereafter sought and obtained relief from the federal court order with regard to the liner based upon EPA's determination. This relief was granted on December 11, 1996. The Tribe has separately sued EPA arguing that it lacked legal authority to grant the waiver; the district court ruled in favor of EPA on December 11, 1996, on that issue. The Tribe has appealed both of these decisions to the Court of Appeals for the Eighth Circuit.

[7] The District expected that the district court would be reversed on the disestablishment issue in light of the strength of the precedent from this Court, the Eighth Circuit Court of Appeals, and the South Dakota Supreme Court. *See Rosebud*, 430 U.S. at 603-604, "the single most salient fact is the unquestioned actual assumption of state jurisdiction." The District files this brief in support of the State because the district court was affirmed on the disestablishment issue and because of the likelihood that the assertion of tribal jurisdiction will continue to affect the District in this or similar contexts.

under *Montana* to regulate the facility as a matter of tribal law, it is by no means certain that the federal government will not delegate *federal* authority to the Tribe, resulting in even further litigation.[8] *But see, Backcountry Against Dumps v. E.P.A.*, 100 F.3d 147 (D.C. Cir. 1996).

Thus, in the place of a well-defined system in which the State was able to grant all of the necessary permits, and would certainly have been delegated federal authority with regard to this area and this landfill, a confused and difficult situation has resulted for the District.

Lastly, the panel majority decision would adversely impact environmental protection in the area generally. EPA has no regulatory machinery in existence with which to grant permits to operate a Subtitle D landfill. Although the landfill would be required to comply with EPA criteria set forth in 40 CFR 258, the *only* entity with jurisdiction to enforce those provisions would be a federal court through a citizen lawsuit filed against the District pursuant to RCRA. 42 U.S.C. 6972. Similarly, it is the District's understanding that EPA does not approve site characterization studies or sites for landfills, nor does it approve preliminary or final design plans for landfills or monitor the construction of landfills. The District also understands that EPA does not have the manpower to adequately inspect landfills. The Tribe had virtually no environmental program at the time of trial, *see* T 315-316, and had not even made an estimate of the cost of a comprehensive program. T 335. To the extent that the Tribe intends to and does successfully insert itself into the regulation of non-Indian lands, which constitute more than 90% of the area in question, the State's authority would no doubt be further clouded.[9]

[8] The State continues to assert its inherent jurisdiction over the District; to what degree that authority will be challenged in the future is unknown.

[9] The Tribe's intent in this regard is unknown. *See* T 320-329.

REASONS FOR GRANTING THE PETITION

> If the policy of allotting lands is conceded to be wise, then it should be applied at an early date to all alike wherever the circumstances will warrant. If we have settled upon the breaking up of the tribal relations, the extinguishment of the Indian titles to surplus lands, and the restoration of the unneeded surplus to the public domain, let it be done thoroughly. If reservations have proven to be inadequate for the purposes for which they were designed, have shown themselves a hindrance to the progress of the Indians as well as an obstruction in the pathway of civilization, let the reservations, as speedily as wisdom dictates, be utterly destroyed and entirely swept away. Report of the Commissioner of Indian Affairs, 8 (1891), Resp. in Support App. 27a-28a.

The District fully supports the reasons for granting the petition set forth in the Petition of the State. We also recognize, of course, that the primary consideration governing review will focus on the fact that the United States Court of Appeals for the Eighth Circuit has decided an important federal question in a way that conflicts with the decisions of the Supreme Court of the State of South Dakota.[10] In addition, however, the District would specifically direct the attention of the Court to the legislative history of the 1894 Act, which is excerpted and summarized *infra*, at 13-30. A brief review of this documentation reiterates two fundamental points in further support of the Petition:

[10] "We granted certiorari in the two cases, 417 U.S. 929, to resolve the conflict between the Supreme Court of South Dakota and the Court of Appeals for the Eighth Circuit as to the effect of the 1891 Act on South Dakota's civil and criminal jurisdiction over unallotted lands within the 1867 reservation boundaries." *DeCoteau v. District County Court*, 420 U.S. 425, 430-431 (1975); "Because the Supreme Court of South Dakota has issued a pair of opinions offering a conflicting interpretation of the Act of May 29, 1908, we granted certiorari." *Solem v. Bartlett*, 465 U.S. 463, 466 (1984); "We granted Certiorari, 507 U.S. 1028 (1993), to resolve the direct conflict between these decisions of the Tenth Circuit and the Utah Supreme Court on the question whether the Uintah Reservation has been diminished." *Hagen v. Utah*, 510 U.S. 399, 409 (1994). *See* Pet. at 13-14.

1. The decision of the court of appeals conflicts in principle with relevant decisions of this Court.

2. This case presents a question of federal law that is important and national in scope.

First, in *every* significant respect, the Yankton documentation squarely tracks the Sisseton-Wahpeton (Lake Traverse) documentation detailed at length in *DeCoteau v. District County Court*, 420 U.S. 425 (1975). Although three short years and one session of Congress separates the passage of the Sisseton-Wahpeton and the Yankton Acts, parts of the Yankton process were actually under consideration in both sessions. Moreover, many of the key congressional participants in the process continued to hold office through the passage of the Yankton Act (e.g., Congressman John A. Pickler of South Dakota "same kind of a treaty we have always made," *infra* at 28, and Chairman of the Committee on Indian Affairs, William S. Holman). In fact, approximately *one-third* of the members in the House of Representatives and *two-thirds* of the members in the entire Senate for the 51st Congress (Sisseton-Wahpeton) were still there in the 53rd Congress when the Yankton Act was finally considered, debated and passed.

In this light, uncontested statements in the debates and reports that *specifically* reference the Sisseton-Wahpeton (Lake Traverse) documentation as *precedent* for consideration in the Yankton process assume a degree of significance that the Tribe cannot avoid. When one also considers that there is not a single reference (or even a suggestion) in the same documentation that Congress considered, much less intended, the enactment of the *radical* departure the Tribe asserts, the extent to which the decision of the court of appeals conflicts with the relevant decisions of this Court is readily apparent.

A single point serves to highlight the extent of this conflict. This is only the *second* time that any federal court of appeals has ever held that a congressional act of this nature did not disestablish the reservation area affected; the *first and only* other case with a similar holding (when controlling law was less clear), was promptly reversed in *DeCoteau*. Since then, *DeCoteau* has been cited and relied on in all circuits as controlling precedent by every other court *except* the district court and the majority of the panel in this case. Nothing in the record in this case fairly supports a departure from this universal view, as the Dissent forcefully and succinctly attests. *See* Pet. at 9-11, 16-19, 21-22, and 24. Pet. App. 44-64.

Secondly, the same documentation also confirms the importance of the question of federal law presented. Here, as in the Sisseton-Wahpeton debates, Congress addressed the national scope of this and related cession legislation and its place in forming the crux of federal Indian policy in that period (1887-1900). In this instance, as in *DeCoteau*, the annual Indian department appropriation act ratified *several* other cession agreements in addition to the Yankton agreement, which further demonstrates the scope of the legislation and its relationship with similar cessions considered in *DeCoteau* (together affecting tens of millions of acres of land across the United States). *See DeCoteau* at 6, and the Act of August 15, 1894, 28 Stat. 286.[11]

To complete the perspective, the District has appended excerpts of the Annual Reports of the Commissioner of Indian Affairs and the Secretary of Interior for the same period. Resp. in Support App. 1a-46a.[12] These reports un-

[11] This legislative history was first submitted to the Supreme Court of the State of South Dakota by Charles Mix County, South Dakota, as *Amicus Curiae* in *State v. Greger*, 559 N.W.2d 854 (S.D. 1997). In *Greger*, the South Dakota Supreme Court reaffirmed its view that the 1894 Act disestablished the Yankton Sioux reservation. *Greger* is discussed in the Petition at 12-14 and appended in the Petition Appendix at 125-158.

[12] These excerpts were first presented to this Court in the text of the Brief for Respondent (pages 72-113) and in Appendix II

equivocally confirm that the Commissioner of Indian Affairs and the Secretary of the Interior considered both the Yankton and Sisseton reservations "restored to the public domain" by the legislation in question ("*land will be restored to the public domain*," Yankton Act, Annual Report, Commissioner of Indian Affairs (1894); "*restoring to the public domain*," Yankton Act, Annual Report, Secretary of the Interior (1894-1895)). Resp. in Support App. 23a, 43a, 44a (emphasis added). They also demonstrate the general thrust of federal Indian law policy and legislation for that period, and unmistakenly support that the conclusions this Court set forth in *DeCoteau* are applicable to the present case. *See also Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977) and *Hagen v. Utah*, 510 U.S. 399 (1994).

THE LEGISLATIVE HISTORY OF THE YANKTON ACT ESTABLISHES THAT THE DIVIDED PANEL UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT HAS DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE RELEVANT DECISIONS OF THIS COURT; THE EXTENT OF THE CONFLICT IS NOT LIMITED TO SOUTH DAKOTA OR TO THE EIGHTH CIRCUIT, IT IS NATIONAL IN SCOPE AND IT IS IMPORTANT.

A. Congress and the Yankton Sioux Tribe Did Not Intend That the Original Boundaries of the Yankton Reservation Would Remain Intact.

1. Introduction. During the "latter half of the 19th century, large sections of the Western States and Territories were set aside for Indian reservations." *Solem v. Bartlett*, 465 U.S. 463, 466 (1984). In particular, the original Yankton Sioux reservation was created in 1858 when Congress ratified a cession agreement with the Tribe, ceding other lands. Act of April 19, 1858, 11 Stat. 743. Pursuant to this cession agreement, some

of Respondent in *DeCoteau*. Brief for Respondent and Appendix II for Respondent, No. 73-1148, *DeCoteau v. District County Court*, 420 U.S. 425 (1975).

430,495 acres were set aside for the exclusive use of the Yankton Sioux. *Id.* This is the 1858 Yankton reservation.

Near the end of the century, however, federal Indian policy changed. *Hagen v. Utah*, 510 U.S. at 402. Congress began to take the view that "Indian tribes should abandon their nomadic lives on the communal reservations and settle into an agrarian economy on privately owned parcels of land." *Solem*, 465 U.S. at 466. *See also DeCoteau*, 420 U.S. at 431; *Hagen*, 510 U.S. at 402. It was felt that "individualized farming would speed the Indians' assimilation" into the American way of life. *Solem*, 465 U.S. at 466.

During this same period, many reservations were subject to certain "familiar forces" encouraging their opening. These "familiar forces" consisted predominantly of two factors. First, "[a] nearby and growing population of white farmers, merchants, and railroad men began urging authorities in Washington to open [reservations] to general settlement." *DeCoteau*, 420 U.S. at 431. Second, many Indians on the reservations "suffering from disease and bad harvests, developed an increasing need for cash and direct assistance." *Id.*

Ultimately, the combination of Congress' new position that Indians should settle on privately owned parcels of land and the ever-present "familiar forces" resulted in the General Allotment ("Dawes") Act of 1887. Act of Feb. 8, 1887, 24 Stat. 388. This Act was "enacted in an attempt to reconcile the Government's responsibility for the Indians' welfare with the desire of non-Indians to settle upon reservation lands." *DeCoteau*, 420 U.S. at 432 (citing Act of February 8, 1887, c.119, 24 Stat. 388). Pursuant to this Act, the President of the United States was granted the authority "to allot portions of reservation land to tribal members and, with tribal consent, to sell the surplus lands to . . . [non-Indian] settlers, with the proceeds of these sales being dedicated to the Indians' benefit." *Id.* (citation omitted).

As a result of the General Allotment Act and the Amendatory Act of February 28, 1891, parcels of land within the Yankton Sioux reservation were allotted to individual Yankton Sioux Indians. Subsequent to the allotment, approximately 168,000 acres of "surplus" land remained unallotted.

2. Legislative History. A brief review of the legislative history of the Act of August 15, 1894, 28 Stat. 286, puts this disestablishment issue in the proper historical perspective. Such a perspective establishes beyond question that the construction of this Act by the federal courts is untenable and clearly erroneous. As the Yankton documentation attests, neither Congress nor the Tribe intended that the original boundaries would remain intact.

The significant aspects of this legislative history are set forth in various disestablishment arguments submitted below in the briefs of the State. At this stage, however, the following chronological overview is intended to supplement those arguments by making clear that nothing in the entire history of this process supports any other conclusion. To the contrary, viewed in perspective, every source confirms that the intent of Congress and the Tribe, in all significant respects, tracks the views set forth by this Court in *DeCoteau*. In *DeCoteau*, this Court was presented with a contemporaneous and nearly identical 1891 Sisseton-Wahpeton (Lake Traverse) Act and held that it had disestablished that reservation. *DeCoteau* is controlling here. *See also Rosebud*, 430 U.S. 584.

(a) The Negotiations. The history of the negotiations for the cession of the surplus lands of the Yankton Sioux reservation follows the same general pattern found throughout the west in the latter part of the Nineteenth Century. Established as a result of an extensive 1858 cession, the Yankton reservation itself was soon subject to the familiar forces noted in *DeCoteau*. In the early 1880's, this process was initially set in motion by the United States. In 1884, the first Commission was sent to the Yankton reservation to negotiate for a cession. Report of the Yankton

Indian Commission dated March 31, 1893, S. Ex. Doc. No. 27, 53d Cong., 2d Sess., 12-13 (1894). These 1884 negotiations were unsuccessful. *Id.* After the passage of the General Allotment Act, applicable throughout the United States, efforts for negotiations were renewed. *DeCoteau*, 420 U.S. at 434 (discussing Section 5 of the General Allotment Act).

In 1889, the South Dakota legislature passed a Memorial to Congress in support of "the opening to settlement under the Homestead law of the Yankton reservation." South Dakota H.R.J. Res. 183, Special Sess. (1889).[13] This Memorial was presented in Congress and referred to the respective committees on Indian affairs. 21 Cong. Rec. 1753, 51st Cong., 1st Sess. (1890). Significantly, similar actions predated the passage of the *DeCoteau* legislation. *DeCoteau*, 420 U.S. at 431-432 n.8.

According to the Commissioners finally appointed to conduct the negotiations, the Yankton Sioux tribe itself initiated the process through communications with the Secretary of the Interior. S. Ex. Doc. No. 27 at 50, 74. In 1892, an appropriation for expenses for this purpose was approved: "to enable the Secretary of the Interior in his discretion to negotiate with any Indians for the surrender of portions of their respective reservations. . . ." Act of July 13, 1892, 27 Stat. 120, 137. In July, 1892, Commissioner of Indian Affairs J. T. Morgan issued letters of instruction to three Commissioners: Colonel J. C. Adams, Dr. W. L. Brown, and John J. Cole. Letter from Commissioner J. T. Morgan, Department of the Interior, to Commissioners (July 27, 1892), Resp. in Support App. 49a-51a.

In this instance, as in *DeCoteau*, the instructions are detailed and referenced throughout the Yankton documents. *DeCoteau*. Commissioner Morgan put the issue squarely in the cession format:

[13] The complete text of the South Dakota Memorial is reproduced at Resp. in Support App. 47a-48a.

> [T]o negotiate with the Yankton Sioux Indians for the *cession* of their surplus lands. . . .

Id. at App. 49a (emphasis added).

Importantly, the Commissioner also specifically referenced allotments pursuant to the "Act of February 8, 1887" (General Allotment or "Dawes" Act) and acts amendatory thereto, "averaging over 150 acres for each member of the tribe." *Id.* at 50a. As a result of these allotments, the Commissioner noted that there should be "a surplus of some 168,000 acres." *Id.* at 49a. *See also*, Pet. App. 9, n.9 (stating "some 200,000 acres were sold in 1894)." Further, the Commissioner instructed that:

> If they are unwilling to cede all the surplus land you will endeavor to obtain the relinquishment of such part thereof as they may be willing to part with. *Id.* at 50a.

Also enclosed with the instructions was a "form of agreement" transmitted for "guidance," but the Commissioner specifically noted that "you are not required to adhere to the same absolutely." *Id.* at 51a.[14]

[14] One aspect of the instructions is worthy of special notation. In setting forth the history of the reservation and the status of the area at that time, Commissioner of Indian Affairs Morgan cited the Treaty of April 19, 1858, 11 Stat. 743, and noted that "the treaty makes no provision regarding the cession or relinquishment of the reservation or any portion thereof." Resp. in Support App. 50a. In other words, unlike some Sioux and other treaties, which required three-fourths approval, the 1858 Treaty had no such special limitation. As a result, the provisions set forth in the General Allotment Act would control the Yankton negotiations. In this respect, a simple majority would suffice. As the Commissioner noted:

> The terms and conditions agreed upon in council should be reduced to writing and incorporated in the accompanying form of agreement which should be signed by at least a *majority* of the male adults of the members of the tribe.

Id. at App. 50a. (emphasis added).

The federal district court, in an attempt to support the result reached in its memorandum opinion, *sua sponte* quoted similar

The Commission arrived at the Yankton agency in Greenwood, South Dakota on October 1, 1892. S. Ex. Doc. No. 27 at 7. Almost immediately, the work of the Commission was interrupted by personal problems. During the first week, Commissioner Brown was "called away and was absent about six days," covering the period of the first council. *Id.* at 8. On October 10, Commissioner Cole received a telegram informing him of a fatal accident involving his oldest son, which, together with the serious illness of his wife, kept him away from the reservation until November 26, 1892. *Id.* In addition, on October 25, Commissioner Adams returned home and was absent until November 10, 1892. *Id.*

Moreover, because of a rivalry among tribal factions, the Commissioners met with some support but more opposition. *Id.* at 8-10. As a result, the discussions continued for several months. *Id.* In the process, several councils were convened and the issue was thoroughly discussed. *Id.* The proceedings of the councils were "kept as fully and as accurately as possible." *Id.* at 8. At the conclusion of the council proceedings, the Commissioners attested that the written records were:

> [C]orrect in all substantial particulars and are as nearly verbatim as possible under the circumstances, and they correctly represent the council proceedings

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language ("'[t]he treaty makes no provision regarding the cession or relinquishment of the reservation or any portion thereof'") in support of the *inexplicable* proposition that the subsequent Yankton agreement of 1892 was *not* a cession. *Yankton Sioux Tribe v. Southern Missouri Waste Management Dist.*, 890 F.Supp. 878, 883 (D.S.D. 1995) Pet. App. 82. In context, the Senate Document does not support the conclusion of the district court and the instructions make clear that the reference there, as in the instructions, was to the 1858 Treaty and the percentage of members' consent required for ratification. Presumably, the Tribe recognized this fact and did not advance or support this strained argument on appeal. The panel majority ignored this error of the district court but the dissent did not. Pet. App. 59-60.

> between the commissioners and the Yankton Indians. *Id.* at 97.

Throughout the councils, the price per acre was the dominant theme in the discussions.

> Peter St. Pierre: This is our land the price is entirely too small. . . . Tom No. 1: The people desire a high price for this land. Whatever we have we want a good price for it, no matter how small. You know that this is a very small tract of land. *Id.* at 74.
>
> Peter St. Pierre: I am against the sale. My friends, this land belongs to us. If the price was higher I might be willing to consider it. *Id.* at 78.

A summary of the council of February 18, 1893, reflected this same sentiment. *Id.* at 91.

The Commissioners were convinced that others, with "vested interest" motives, fueled the opposition. This group, according to the Commissioners, was not concerned with the price per acre:

> John J. Cole: [T]hat we can not get these employe[e]s to sign the agreement? Of all the Indians employed at this agency but two have signed. Louis Claymore and one other mechanic signed, and all the balance are against us, the office is against us, the police office is against us, the shops are against us, the whole agency is against us and is a hotbed of opposition, so that men who come here to sign are sent away without doing so. . . . [L]ittle progress had been made in taking signatures, as the opposition, under the lead of some of the white employe[e]s of the Government, were straining every nerve to prevent the signing of the agreement. Id. at 86, 89. *See also* S. Ex. Doc. No. 27 at 89, 94.

In the end, an agreement was reached with more than a majority of the adult male members of the Tribe. *Id.* at 94.[15] Significantly, in the process, the discussion

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[15] The agreement was "translated into the Dakota language for the use and consideration of the Yankton Sioux tribe." S. Ex. Doc. No. 27 at 51.

establishes several points that are important in the resolution of the question presented here.

(1) References to Sisseton-Wahpeton (Lake Traverse) Cession. In general, this record constitutes an important source which confirms that, without exception, the substance of the process and the intended result corresponds with the *DeCoteau* process in every respect. In fact, in several instances the Commissioners and others specifically made reference to the Sisseton-Wahpeton (Lake Traverse) cession presented in *DeCoteau*:

> Henry Selwyn: If the *Sissetons* and Titonwan had sold their land at the same price at which we sold ours in 1858 per acre they would have given the Government their lands for nothing. *Id.* at 54 (emphasis added).

> John Cole: They have reported that four bands of Pawnee Indians will sell their land for $1.25 per acre. *The Sisseton Reservation was purchased by the Government at $2.50 per acre.* This is the highest price which has ever been given. So you see your ideas of price are away up. *Id.* at 68 (emphasis added).

> John Cole: The commissioners are now ready to make you an offer for your surplus lands. The Government will pay you $600,000 for your surplus lands, amounting to about 168,000 acres; payments to be made on the terms of our instructions from the Department of the Interior. This is nearly $3.60 per acre and is more than double what the Cherokees have agreed to sell for. *It is more than the Government paid for the Sisseton Reservation* and is the highest price we have ever known the Government to offer. *Id.* at 71 (emphasis added).

(2) Cession and Related References. The manner in which all parties referred to the process in general "cession," "sale," and "treaty" terms also confirms the general understanding and further demonstrates the similari-

ties and the purposes of the negotiations. As in *DeCoteau*, the process was not atypical. *DeCoteau*, 420 U.S. at 439 nn.21, 22. From the very beginning, the Agent, Col. Foster, the Commissioners and others clearly stated:

> Col. Foster: The Government has sent a commission to you to negotiate with you for your surplus lands . . . You do not have to sell your surplus lands if you do not want to. . . . Col. Adams: [W]e also understand that you own, outside of your allotments, a large quantity of land in common. It is this land that you own in common that we were appointed by the Great Father to talk to you about. . . . [A] treaty with you for your lands. . . . John J. Cole: [W]e must make this treaty . . . to sell your surplus lands . . . to sell your surplus lands . . . [T]he Government would buy your surplus lands if you want to sell them. . . . John J. Cole: [Y]ou have sent word to Secretary Noble that you desire to sell your surplus lands. . . . Henry Selwyn: This is the second time we sold land to the Government. . . . William T. Selwyn: Treat for the sale of the surplus land. . . . William Bean, Sr.: Struck by the Rees has sold a great portion of our reservation . . . Jandran: Selling our lands. . . . White Swan: Negotiate for the sale of these surplus lands. . . . Dr. Brown: I believe if you make this treaty. . . . Dr. Brown: [D]ecide whether you want to sell or not. . . . John J. Cole: [T]o make this treaty between you and the Government. . . . [A] direct out-and-out sale of the whole of your surplus lands. . . . [T]o cede these surplus lands to the Government. . . . We propose to buy all these lands, good, bad and indifferent. . . . Felix Brunot: [W]hether we will sell our lands or not. . . . Eugene Brunot: [S]ell their land. . . . John Omaha: It was decided by the committee that they would sell the land. . . . John Grayface: We do not object to the provisions of the treaty, but we do not want to make a treaty at this time. S. Ex. Doc. No. 27 at 48-50, 54, 56, 58, 67, 68, 73, 91. *See also* S. Ex. Doc. No. 27

at 50, 52, 57, 59-64, 66, 67, 69-72, 74, 75, 77-79, 83, 86-88, 93, 94.

(3) Treaty of 1858, 11 Stat. 743. All parties also made specific reference in these negotiations to the earlier 1858 Yankton cession. Of course, no one has ever questioned the effect of the 1858 cession (or any similar cession) on the reservation boundaries. A distinction between the 1858 cession and the 1892 cession in this respect cannot be documented in the transcripts of these negotiations:

> Henry Selwyn: I will now refer to the treaty of 1858. This is the second time we sold land to the Government. I think they should be very grateful to us for selling our land. We do not know how many acres we sold at that time, but we know it was many thousands of acres. . . . Col. Foster: Under the treaty of 1858 you sold a vas[t] tract of land for but little more than you will get under this treaty for the small amount of surplus land which you have left. S. Ex. Doc. No. 27 at 54, 83. *See also* S. Ex. Doc. No. 27 at 55-58, 61, 65, 66, 80.

(4) Familiar Forces and The General Allotment Act. The familiar forces noted in *DeCoteau* are also reflected in the Yankton councils:

> John J. Cole: The Great White Father . . . wants you to sell your surplus lands for which you have no use. If you want to sell these surplus lands we will buy them and pay you all they are worth, and the Government will sell them to men who will make homes on them and will build good houses and make good farms, and this will make your other lands—your homes—more valuable, so that the lands you have left will be worth more than all your lands are now worth, and what you get from the Government for the surplus lands will be a clear gain to you.

Id. at 49. *See also* S. Ex. Doc. No. 27 at 49, 50, 67, 68, 71, 72, 74, 75, 81.[16]

(b) Commissioners Report. On March 31, 1893, the Commissioners submitted their report to the Secretary of the Interior. *Id.* at 7. In approximately 18 pages, this report summarizes all significant aspects of the Yankton negotiations. In every respect it confirms the substance of the points noted above. The transaction was aptly described by the Commissioners as a "cession of their surplus lands," "purchase of the surplus lands," and "sale of their surplus lands;" excerpts of the negotiations were restated in detail. *Id.* at 7, 17.

The Commissioners concluded that the "purchase covers all the unallotted lands at a liberal price." *Id.* at 20. At the same time the Commissioners noted:

> Advancing civilization and the improvement of the surrounding country have immensely increased the market value of the land in this reservation, but aside from this increased valuation from external causes the reservation is worth much less to-day than it was when they made the treaty with the United States 35 years ago. While the farm improvements on the reservation are very meager, large bodies of timber have been almost wholly destroyed, leaving the reservation nearly denuded of tree life without any compensating improvement. . . . At present these Indians are receiving no benefit worthy of mention from any of their lands. Not only are their surplus lands lying waste and useless, but the same is true of their allotted lands, as but an exceedingly small portion of these lands is under cultivation. *Id.* at 15, 19.

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[16] In more specific terms, the General Allotment Act (Section 5), formed the backdrop for this process as it did in the Sisseton-Wahpeton (Lake Traverse) negotiations discussed in *DeCoteau*. *DeCoteau*, 420 U.S. 425, 434. It is also mentioned several times in the negotiations. S. Ex. Doc. No. 27 at 51, 52, 57.

The report concluded that but for the opposition from white employees "we could have secured the assent of nearly all the tribe to the sale." *Id.* at 23.

(c) Congressional Ratification. When the report reached Washington, D.C., a bill to ratify the agreement was introduced in the Senate (S.442) but was delayed due to allegations involving the negotiations. *Id.* at 7. In September, 1893, the Commissioner of Indian Affairs detailed a special United States Indian Inspector to the reservation who, after an investigation, concluded "no undue pressure was used or improper methods resorted to. . ." *Id.* at 38.

Less than a month after the investigative report dated November 13, 1893, was received by the Commissioner of Indian Affairs, he formally submitted a favorable report on the entire agreement to the Secretary of the Interior. *Id.* at 1. This report again confirms the substance of all points noted above. In addition, it reviews the agreement *article by article.* Not a word in the entire six-page report supports the Tribe's contentions. Nor is there any doubt that the Yankton agreement was viewed as anything other than a normal cession. The Commissioner of Indian Affairs concluded his report in precisely this fashion: "I have accordingly prepared the draft of a bill for that purpose, in the *usual* form and herewith transmit the same in duplicate . . . . in line with *similar* acts." *Id.* at 7 (emphasis added).

By letter of January 16, 1894, the Secretary of the Interior submitted the Commissioner of Indian Affairs report and enclosed a draft to the President of the United States Senate. *Id.* at 1. In this correspondence, the Secretary specifically noted that the correspondence contained "a full statement of the facts in relation to said agreement." *Id.*

Two days later, the entire package was referred to the Senate Committee on Indian Affairs in order to be printed

as Sen. Exec. Doc. No. 27. This 101-page document contains the entire council proceedings with the Yankton Indians (47-101), the Articles of Agreement between the United States and the Yankton Sioux tribe (38-47), the investigative report (35-38), the Commissioner of Indian Affairs' draft of the bill to ratify and confirm the agreement and the Commissioner of the General Land Office correspondence relating to same (25-35), the report of the Yankton Indian Commission (7-25), the Commissioner of Indian Affairs report (1-7), and the Secretary of the Interior's submittal correspondence (1).

In the interim, as in *DeCoteau,* newspapers reported that many settlers anxiously awaited the opening of the reservation:

> The prospect for the early opening of the Yankton reservation is causing quite a stir at Armour. Inquiries are pouring in from all directions, and the minute the bill passes congress there will be a rush to be on the ground.

Yankton Press and Dakotan, Feb. 15, 1894.

> It is expected that when the president declares the reserve open there will be a great rush for land.

Yankton Press and Dakotan, Feb. 17, 1894.

Similarities to the opening of the Sisseton-Wahpeton (Lake Traverse) reservation do not end here. As noted *supra* at p. 10, in Congress, the Yankton agreement was eventually presented for ratification as part of the annual Indian department appropriation bill, the same process utilized for ratification in *DeCoteau. DeCoteau,* 420 U.S. 425, 440. Moreover, here, as in *DeCoteau,* other agreements were also a part of this package. *Id.* at 439 nn.21, 22. If Congress did not intend this cession agreement for a sum certain to disestablish the Yankton reservation, there is certainly no evidence of such intent in any of the documentation.

The bill, H.R. 6913, was introduced and reported to the Committee of the Whole House by the House Committee on Indian Affairs on April 30, 1894. 26 Cong. Rec. 4275, 53d Cong., 2d Sess. (1894); H.R. Rep. No. 802, 53d Cong., 2d Sess., pt. 5 (1894). In the many pages of general congressional debate that follow, nothing of substance can be cited to support the argument that Congress intended to leave the original boundaries of the reservation intact. In fact, every exchange points to the opposite conclusion.[17]

For example, by June, 1893, the House started to focus on reservation policy generally:

> Mr. WILSON of Washington. I will ask the gentleman whether he does not think a start should be made by diminishing the reservations. There are now about 120,000 reservation Indians, and they occupy about 5,000,000 acres of land. 26 Cong. Rec. 6235 (1894).
>
> Mr. SMITH of Arizona. Yes, they hold five times as much land as they ought to occupy. They are roaming over great areas of land now, and that tends to keep them in a wild state, because it keeps them removed from all sorts of civilizing and educating influences. As long as the Indian is allowed to occupy reservations, some of which are as large as an Eastern State. . . . 26 Cong. Rec. at 6235.
>
> Mr. FLYNN. I realize the fact that we are constantly crowding the Indian more and more off his reservations because we want more land for white settlement. *Id.* at 6236.

[17] Of course, this is not to say that the record does not also contain an occasional reference to "in" or "on" the reservation. But as the Tenth Circuit Court of Appeals aptly pointed out in *Pittsburgh & Midway Coal Min. Co. v. Yazzie*, 909 F.2d 1387, 1416 (10th Cir. 1990), such references are of little probative value. Similar references also appear throughout the documentation in *DeCoteau* and *Rosebud*.

> Mr. HARTMAN. Mr. Chairman, let us proceed by treaty to extinguish every right, if they have any, in the lands of the Indian reservations; let us purchase the lands and allot to them 160 acres each. . . . *Id.*
>
> Mr. COFFEEN. There is much more land given to the Indians in reservations than is proper. They have too much. I join in the sentiment that we must, by treaty, by purchase, and relinquishment, or by some other methods, cut down this vast territory in reservations that often blocks the settlement of great tracts of Western country. That is one of the things that must be done. *Id.*
>
> Mr. BLAIR. Here are 250,000 people . . . occupying an amount of territory which would yield support to at least ten millions of civilized people. *Id.* at 6237.
>
> Mr. WILSON. Of course, if we are never to commence with a reduction of the reservations and of the appropriations, the Indian problem will not be settled. . . . There are places, Mr. Chairman, and there are Indian reservations, that if Congress would do its duty could be closed up and disposed of forever. *Id.*

In those instances when the Yankton measure was first singled out because of the lower settler acreage provisions and the higher interest rate, general references to "cession," "General Allotment Act," and other "common practices" support this same view. *Id.* at 6373, 6374.

And on June 16, 1894, when the debate centered on the Yankton agreement, reference to "public domain" and other similar comments are even more probative:

> Mr. McRAE. [T]hese provisions change the methods of disposing of the lands that will become a part of the *public domain* under these agreements. . . . Mr. LYNCH. [T]he treaties the lands cost 75 cents or 80 cents or $1 an acre; and in one case, that of the Yankton Reservation, the Government pays $3.50 an acre. . . . In regard to the Yankton Reservation

> the committee were of the opinion that as the price of those lands was $3.75 an acre, $1.60 an acre would come too high for a poor man to buy, and therefore we concluded to reduce the amount which one man could enter there to 80 acres. Each reservation was taken up on its own merits, and disposed of on its own merits. *Id.* at 6425 (emphasis added).

In that same debate, others described the process with reference to the same concepts, laws and forces ("the act approved February 8, 1887," "until they become segregated from the Indian lands and become in fact a part of our *public domain.*") *Id.* at 6426 (emphasis added). *See also* 26 Cong. Rec. 6431 ("three times as much land as is necessary").

After the Chair found that a general point of order was not well taken, the bill passed the House that same day. *Id.* at 6427, 6431. Although the message that the bill had passed the House was immediately recorded in the Senate, it was not reported from the Senate Committee on Appropriations until July 10, 1894. *Id.* at 6439, 7230; S. Rep. No. 510, 53d Cong., 2d Sess. (1894).

The Senate debate started on July 18, 1894, and later that same day, the Senate specifically addressed the Yankton agreement. 26 Cong. Rec. 7616, 7627. As was the case in the House, nothing of substance in the Senate debates supports the argument of the Tribe that Congress did not intend this cession agreement to disestablish the original boundaries of the Yankton reservation. Minor unrelated changes were accepted or rejected on the basis of "business as usual." For example, see the "rule which has been pursued in all other Indian appropriations acts" comment and the "I doubt whether we ought to make a different provision in the opening of one of these reservations" comment. *Id.* at 7628. At the same time, the liquor prohibition provision was amended in final form without debate. *Id. See Rosebud*, 430 U.S. 584, 614, 615 and 624 citing *Dick v. U.S.*, 208 U.S. 340 (1908). *See also* Pet. at 9, 11, 27, 29.

The next day, other provisions of the bill were discussed and approved including legislation initiating negotiations for the Uintah and Uncompahgre reservations in Utah that similarly support disestablishment arguments.[18] Other reports were submitted for the record that also continue to reflect the familiar forces noted throughout the Yankton documents. Under a subheading of "Indian Lands and Their Purchase," a report by Mr. Donaldson noted:

> After the reservations were established by executive order or by law they *were and are still being diminished,* by an actual *decrease of reservation lines,* either by the demands of settlers, forcing reduction, or by the modern method of allotment, the Indians, by the latter method, being paid for the excess of the reservation they occupy. When reservations are *diminished* in gross the Indians are paid for the area of the reservation which the Government takes possession of and disposes of under the various laws.

26 Cong. Rec. 7689 (emphasis added).

After additional unrelated debate, the bill, as amended, passed the Senate the same day. *Id.* at 7708.

The House did not concur in the Senate amendments and requested a conference on July 21, 1894. *Id.* at 7783-7784. On July 23, 1894, the Senate insisted on its amendments and agreed to a conference. *Id.* at 7800. After the conference, the Senate still disagreed with some amendments and reported the same with a request for a

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[18] Both Utah measures were subsequently modified in later legislation. This Court in *Hagen* rejected an original boundary argument and held that the Uintah reservation was diminished. *Id.* The panel majority completely missed the point, citing the 1985 Tenth Circuit case with reasoning since disavowed as "unexamined and unsupported" by the Tenth Circuit and effectively undermined by this Court, which expressly noted this very point. *Yazzie*, 909 F.2d at 1400; *Hagen*, 510 U.S. at 414. Pet. App. 28, n.21. In other litigation, the United States conceded the Uncompahgre reservation no longer exists, although this issue is yet to be resolved by the Utah Supreme Court or the Tenth Circuit Court of Appeals.

further conference. *Id.* at 8015. The House noted the partial concurrence and printed the report of the committee of conference in the record. *Id.* at 8056.

On August 2, 1894, the House consented to a further conference, specifically noting that the subjects upon which no conclusion had been reached included:

> [T]he appropriation of money for lands purchased from the Nez Perce Indians of Idaho and lands purchased from the Yankton Sioux in South Dakota, and lands purchased from the Siletz Indians of Oregon. *Id.* at 8136.

On August 6, the House again considered the matter. *Id.* at 8251. This debate, which extends throughout some 20 pages of the congressional record, contains additional references that support the conclusions noted above. The controversy continued to center around the amount and how the money should be paid, as well as the interest involved, but the comments leave no doubt as to the general view of Congress. *Id.* at 8255. Miscellaneous tributes were initially paid to Mr. Dawes (*Id.* at 8252), and references to "always been the practice" and "nearly universal customs" continued. *Id.* at 8255. Other comments describe the familiar forces:

> Mr. WILSON of Washington. All over the West . . . constantly letters to know when this reservation will be open to settlement. It is exceedingly valuable and fertile land, and will give an opportunity to build up a great agricultural community there. . . . This country is greatly interested in the result. We are gradually closing up our reservations; we are gradually getting them settled by the white people. *Id.* at 8256, 8257.

Later in the same debate, the Yankton agreement was again specifically referenced. *Id.* at 8265. Representative Pickler of South Dakota made clear that it was "the same kind of a treaty we have always made." *Id.* He also noted again:

> [I]f that has not been the *universal practice* of the Government, and if we have not bought Indian lands during a period of time immemorial? Have we not also sold the lands to settlers? Is there anything *new* in that? . . . [T]he treaty for the Yankton Sioux Reservation; and *what can be said of that treaty can, in general terms, be said of the others.* The proposition that is before the House today is very simple. We are needing more lands for settlement. By an act of Congress we provided for sending out a commission to *treat with the Yankton Sioux Indians for their reservation.* . . . [W]e simply procure these lands in the *same way* we have always procured lands from the Indians. We make *no departure from our past policy;* we are following in the *same* line. . . . [W]hat is the *uniform* policy of the Government in these matters. The Government does not want to speculate off of settlers; so it buys lands from the Indians as fairly and as cheaply as it can, and then disposes of the lands to the settlers at such prices as will reimburse it for the money paid to the Indians.
>
> That is the policy pursued in all these cases. And until very recently the Government purchased the lands of the Indians and disposed of them to the settlers free, but lately it is charging the settler what it paid the Indians. . . . [A]nd these are treaties, just as *all other cessions* of land have been. . . . Let us settle with the Indians at once and give the settlers all over this country who want homes an opportunity to secure them. . . . Does not the gentleman know that heretofore we have bought the lands of the Indians and given the lands to settlers? Now we are buying land from the Indians and selling it to the settlers. . . . *Id.* at 8266, 8267-8269 (emphasis added).
>
> Mr. Wilson. . . . And this [another] reservation is standing as a block in the way of the development and progress of the country. That is one reason why it is so important that action, and prompt action,

> should be taken upon this treaty. . . . I hope in return that they may be as generous to the people of the West, and help us to develop that empire, and throw open the reservations of the Government. *Id.* at 8271.

At the end of the next day, on August 7, 1894, the House considered the question and without substantial debate, receded from the disagreement to the Senate amendments, and agreed to the same. *Id.* at 8287. The Senate submitted a brief report on August 8, 1894, noting agreements and disagreements and this conference report was "concurred in." *Id.* at 8296. The bill was signed in the House on August 9, 1894, the Senate on August 10, 1894, and by the President on August 16, 1894. *Id.* at 8360, 8362, 8592. Act of Aug. 15, 1894, 28 Stat. 286.

The Presidential Proclamations opening the Reservations to settlement were deemed especially significant in *Rosebud*, 430 U.S. at 602-603, and *Hagen*, 510 U.S. at 419-420. In this instance, the cession terminology of the Yankton Proclamation similarly reflects this same important construction. Yankton Proclamation of May 16, 1895, 29 Stat. 865.

CONCLUSION

For the foregoing reasons, and those stated in the Petition, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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APPENDIX

[Excerpts from the Annual Reports of the Commissioner of Indian Affairs and the Secretary of the Interior]

1A. REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS, H. EXEC. DOC. 48TH CONG., 2D SESS. (1884) (EMPHASIS ADDED).

Crows.—Since my last report was made, the Crow Indians, whose reservation in Montana is estimated to contain 4,713,000 acres, have been removed from their old location in the western part of the reservation to the valleys of the Big Horn and the Little Big Horn rivers. At 5.

Not only has this been done, *but it has thus been made possible to add to the public domain* at least 3,000,000 acres of this reservation, leaving still all the land necessary for the use and occupancy of this tribe of Indians. If this 3,000,000 acres are so disposed of as to give the Crows some benefit of the proceeds thereof, they will no longer require any aid from the Government, and thus one fraction of the Indian problem will have been solved, and an example and incentive given to other tribes of Indians to do likewise. At 5-6.

It having been represented to the Department that the Sisseton and Wahpeton and the Yankton bands of Sioux were desirous of disposing of a limited portion of their respective reservations, the Sioux Commission were instructed, under date of May 10th last, to visit said reservations and ascertain if such was the case, and if so to negotiate with them as to the quantity they would *cede*, the conditions as to the price, etc. No report has been received from them up to this date, but the agent for the Sisseton and Wahpeton bands reports that his Indians are unwilling to part with any of their

lands, and that the visit of the Commission was unsuccessful. At 30-31.

1B. REPORT OF THE SECRETARY OF THE INTERIOR, H. EXEC. DOC. 48TH CONG., 2D SESS. (1884) (EMPHASIS ADDED).

If the reservation is larger than is required for the use of the Indians occupying it, there should be a reduction thereof, and all that is not needed for the use of the Indians should be opened to settlement. The time has passed when large and valuable tracts of land fit for agriculture can be held by Indians for either hunting or grazing lands to the exclusion of actual settlers. At 7.

In my last report I called attention to the magnitude of this reservation, and urged that it should be reduced by a purchase of about 18,000 square miles, as proposed by the commissioner appointed in 1882. At 13.

This reservation is much larger than required for their support. The reservation is situated in the Territory of Montana, and contains 7,364 square miles, or 4,713,000 acres of land. At least 3,000,000 acres might be disposed of, . . . at 13.

2A. REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS, H. EXEC. DOC. 49TH CONG., 1ST SESSION (1885) (EMPHASIS ADDED).

This brings me directly to the consideration of the practical policy which I believe should be adopted by Congress and the Government in the management of the Indians. It should be industriously and gravely impressed upon them that they must abandon their tribal relations and take lands in severalty, as the corner-stone of their complete success in agriculture, which means self-support, personal independence, and material thrift. The

Government should, however, in order to protect them, retain the right to their lands in trust for twenty-five years or longer, but issue trust patents at once to such Indians as have taken individual holdings. When the Indians have taken their lands in severality in sufficient quantities (and the number of acres in each holding may and should vary in different localities according to fertility, productiveness, climatic, and other advantages), then having due regard to the immediate and early future needs of the Indians, *the remaining lands of their reservations should be purchased by the Government and opened to homestead entry at 50 or 75 cents per acre*. The money paid by the Government for their lands should be held in trust in 5 per cent bonds, to be invested as Congress may provide, for the education, civilization, and material development and advancement of the red race, reserving for each tribe its own money. This is all the Indians need to place them beyond the oppression and greed of white men who seek, as Mr. Barbour said in 1825 in his report as Secretary of War, "to bereave the Indians of their lands." At 4.

Assuming, however, that I have correctly divined the almost unanimous wish of the States mentioned, and that Congress would feel disposed to respect their wishes, then the further question of purchasing from the Indians all of the lands of the Indian Territory, *and of other Indian reservations*, which the Indians do not need now, or will not need in the early future, and of *opening them to homestead settlement*, presents itself for consideration. At 11-12.

THE KLAMATH RIVER INDIANS IN CALIFORNIA.

They do not need all the lands at present reserved for their use, but they should be permanently settled, either individually or in small communities,

and their lands secured to them by patent *before* any portion of their reservation is *restored to the public domain*.

ROUND VALLEY RESERVATION
IN CALIFORNIA.

This reservation was first selected for Indian purposes in 1856, and according to the survey made in 1860, comprised 25,030.8 acres (being the entire Round Valley), of fertile and productive land. Under the act of March 3, 1873 (17 Stat., 633), the boundaries of the reservation were changed, and the southern portion of the valley *thrown open to settlement*, leaving between 5,000 and 6,000 acres of it within the reservation. At 49.

The reduction of their reservation to two townships has caused some dissatisfaction, and they have asked for more land; . . . If they have suffered any wrong, as is claimed, on account of *the restoration to the public domain* of the Turtle Mountain country, by which is meant that vast territory lying north of Devil's Lake and west of the Red River of the North, the remedy is with Congress. At 53.

2B. REPORT OF THE SECRETARY OF THE INTERIOR, VOL. 1 (1885) (EMPHASIS ADDED).

The question as to what is the best and wisest course to pursue relative to these surplus lands in the Indian reservations not required for the present wants of the Indians is one demanding careful and serious consideration. . . . If, however, it shall be decided that the welfare of the Indians as well as the public interests will best be served by opening the surplus lands of these reservations to public settlement, it should be done in good faith under the general land laws of the United States. At 19.

ESTATE OF THE INDIANS.

I favor the policy recommended by a predecessor in this office, Secretary Kirkwood, of reducing to proper size the existing reservations, when entirely out of proportion to the number of Indians thereon, with the consent of the Indians, and upon just and fair terms; and second, of placing by patent the titles to these *diminished reservations* as fully under the protection of the courts as are titles of all others of our people to their lands. *The surplus portion cut off should be subject to sale* and the proceeds invested for the benefit of the Indians. The execution of it should be cautious and tentative. At 26.

He also recommends the *compression* of Indian reservations and *opening* the surplus to settlement, and cites the condition of those on the *Sisseton Reservation* who occupy separate tracts of land and are self-supporting, maintain churches and schools, and live in comfortable houses. At 78.

3A. REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS (1886) (EMPHASIS ADDED).

The practical proposition which it seems to me would be best for these Indians would be to *divide their lands* in severalty upon the basis I have suggested, or upon some other reasonable basis, and to *sell the remainder to actual settlers* at a fair and just price. At VIII.

The *general allotment* bill again passed the Senate at the last session, and was favorably reported in the House of Representatives. As there seems to be no substantial opposition to this bill, it is hoped that it will be come a law during the coming winter. Its passage will relieve this office of much embarrassment and enable it to make greater progress in the important work of assisting the Indians to be-

come individual owners of the soil by an indefeasible title. At XX.

3B. REPORT OF THE SECRETARY OF THE INTERIOR, VOL. I (1886) (EMPHASIS ADDED).

I wish I could say that the progress in this direction is sufficiently rapid to promise an early accomplishment of the policy of the Government in reference to our Indian population. That policy, as I understand it, is the incorporation of the Indian race into our political and social system as citizens. . . . As I stated in my last report, the only alternative now presented to the American Indian race is speedy entrance into the pale of American civilization, or absolute extinction. At 4.

The Indians have seen the wide ranges of territory occupied or claimed by them gradually but surely narrowed to smaller limits . . . at 6.

NEGOTIATIONS WITH INDIANS.

The negotiations authorized by the act approved May 15, 1886, making appropriations for the Indian service, to be made with certain bands or tribes in Minnesota. North Dakota, and Montana, concerning their existing treaties and reservations, and with other Indians in Washington and Idaho Territories for their removal to certain designated reservations and *cession* of certain lands, have been entrusted to a commission appointed during July last. . . . At 13.

By Executive order of May 1, 1886, the land embraced within the Columbia Reservation in Washington Territory, except the tracts occupied by and allotted to the Indians thereon, was restored to the *public domain*. . . . At 14.

4A. REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS (1887) (EMPHASIS ADDED).

ALLOTMENT OF LAND IN SEVERALTY.

The *general allotment act*, the plan of which was first suggested in the annual report of this office for 1878, became a law on the 8th of February last. I have deemed it a matter of public interest and convenient reference to submit in this report not only the full text of the act, which will be found on page 274, but also an abstract of its provisions, which are as follows: . . .

After lands have been allotted to all Indians of a tribe (or sooner if the President thinks best), the Secretary of the Interior may negotiate with that tribe for the sale of any of their unallotted lands, such negotiations to be subject to ratification by Congress. . . .

In case lands are thus sold, the purchase money to be paid therefore by the United States shall be held in the United States Treasury in trust for that tribe, at 3 per cent interest, which interest shall be subject to the appropriation by Congress for the civilization of said tribe. . . .

All lands adopted to agriculture released to the United States by Indian tribes shall be disposed of only to bona fide settlers, in tracts not exceeding 160 acres (subject to grants which Congress may make in aid of education), and no patents shall issue to any such settler or his heirs for such lands until after five years' continuous occupancy thereof as a homestead, and any conveyance of or lien on said land prior to the issuance of patent thereto shall be null and void. At IV and V.

The President has wisely ordered that allotments be made only on reservations where the Indians are

known to be generally favorable to the idea, and the following have thus far been selected: Papago and Pima (Salt River). Arizona: L'Anse and Vieux de Sert, Michigan; Lac Court d'Oreilles, Bad River, Red Cliff, and Lac du Flambeau, Wisconsin; Fond du Lac, Minnesota; Lake Traverse, Devil's Lake, Ponca, and Yankton, Dakota; Nex Perce, Idaho; Crow, Montana; Absentee Shawnee, Pottawatomie, Quapaw, Modoc, Ottawa, Shawnee, Seneca, and Wyandotte, Indian Territory; Winnebago, Nebraska; Siletz, Grande Ronde, and Warm Springs, Oregon; and Muckleshoot, Washington Territory. At VI and VII.

I fail to comprehend the full import of the allotment act if it was not the purpose of the Congress which passed it and of the Executive whose signature made it a law ultimately to dissolve all tribal relations and to place each adult Indian upon the broad platform of American citizenship. Under this act it will be noticed that whenever a tribe of Indians or any member of a tribe accepts lands in severalty the allottee at once, *ipso facto*, becomes a citizen of the United States, endowed with all the civil and political privileges and subject to all the responsibilities and duties of any other citizen of the Republic. At XXIX.

To enable the Secretary of the Interior to *negotiate* with the several tribes and bands of Chippewa Indians in the State of Minnesota for such modification of existing treaties with said Indians and such change of their reservations as may be deemed desirable by said Indians and the Secretary of the Interior, and as to what sum shall be a just and equitable liquidation of all claims which any of said tribes now have upon the Government; and also to enable said Secretary to *negotiate* with the various bands or tribes of Indians in northern *Montana* and

at *Fort Berthold*, in Dakota, for a reduction of their respective reservations, or for removal therefrom to other reservations; and also to enable said Secretary to negotiate with the upper and middle bands of Spokane Indians and Pend d'Oreille Indians, in Washington and Idaho Territories, for their removal to the Colville, Jocko, or Coeur d'Alene reservations, with the consent of the Indians on said reservations; and also to enable said Secretary to negotiate with said Indians for the *cession* of their lands to the United States; and also to enable said Secretary to negotiate with the Coeur d'Alene Indians for the *cession* of their lands outside the limits of the present Coeur d'Alene reservation to the United States, $15,000, or so much thereof as may be necessary, to be immediately available; but no agreement shall take effect till ratified by Congress. At XXVII and XXVIII.

The next Indians visited by the Commission were the Arickarees, Gros Ventres, and Mandans, of the Fort Berthold agency in Dakota, with whom an agreement was concluded January 11, 1887. By the terms of the agreement, the Indians *cede* about 1,600,000 acres of their reservation for the sum of $800,000, . . . *The agreement also provides for the allotment of lands in severalty to said Indians within the diminished reservation*. . . .

The Indians in northern Montana, belonging to the Fort Peck, Fort Belknap, and Blackfeet agencies, were the next visited by the Commission. These Indians occupy a reservation estimated to contain 33,830 square miles, or 21,651,000 acres. The agreement entered into with them provides for the *cession* to the United States of about 17,500,000 acres, and leaves three separate reservations of sufficient area, it is believed, to meet all their present and prospective wants. At XXIX.

A portion of the lands set apart to the Pawnees as a reservation, under the act of April 19, 1876 (19 Stats., 28), comprising 53,005.96 acres, was *ceded* to the United States by the Creeks by the third article of the treaty of June 14, 1886 (14 Stats., 785). At LXIV.

4B. REPORT OF THE SECRETARY OF THE INTERIOR, H. EXEC. DOC. 50TH CONG., 1ST SESS. (1887-1888) (EMPHASIS ADDED).

And I can only reiterate the conviction expressed in former reports, that the Indian race has reached a crisis in its history. Surrounded on all sides by the forces of civilization; all the reservations closed in and pressed upon by ever-increasing masses of population, made up of impetuous, daring, and aggressive settlers, miners, ranchmen, and traders; with no possibility of removal to other reservations or of escape into mountain fastnesses, the only alternative presented to the Indian race is absolute extinction or a quick entrance into the pale of American civilization. At 25.

The most important measure of legislation ever enacted in this country affecting our Indian affairs is the general allotment law of February 8, 1887. By this law every Indian, of whatever age, may secure title to a farm, enjoy the protection and benefits of the law, both civil and criminal, of the State or Territory in which he may reside, and be subject to the restraints of those laws. At 25-26.

The argument that this legislation or the measures adopted under it should be postponed until the race by gradual process is morally and intellectually adapted to the condition of civilized society is conclusively answered by the fact that a century of effort to so adapt them has produced

nothing in that direction which promises any such fitness within a century to come. The exigencies of the age will not await another century or even a quarter of a century of such expenditure of effort and time with such incommensurate results. At 26-27.

NEGOTIATIONS WITH INDIANS.

Agreements were also negotiated by the Commission with the Indians belonging to the Fort Peck, the Fort Belknap, and the Blackfeet agencies, in Northern Montana, for *cession* of about 17,500,000 acres of territory, leaving about 4,151,000 acres to be divided into three separate reservations of sufficient area to meet the wants of the Indians now inhabiting that portion of the large reservation in Northern Montana. The compensation agreed upon for the land proposed to be ceded by this agreement is $4,300,000, . . .

As a summary of the labors of the Commission it is estimated that agreements negotiated provide for *cession* to the United States by the Indians of nearly 22,000,000 acres of territory, besides the surrender by certain tribes of claims to large areas of territory, the quantities and limits of which are rather indefinite and undefined. At 38-39.

The Commission appointed under the act of March 3, 1885, for the purposes therein required, has made its report, showing that the Umailla, Walla Walla, and Cayuse Indians of Oregon have consented to the provisions of the law for diminishing the area of their reservation, taking lands in severalty, and for sale of their surplus lands for their benefit. They determined and set apart a diminished reservation embracing an area of 119,864 acres, for agricultural, pasture, timber, and school farm lands for the Indians. At 39.

by the Commission, and an agreement was concluded with the Indians of the Colville Reservation whereby they ceded to the United States the northern half of their reservation, embracing about 1,500,000 acres, for a consideration of $1,500,000. The report of the commission, their proceedings, and the agreement negotiated, were submitted to Congress at the beginning of its last session, accompanied by a draft of a bill to ratify the same, although certain provisions of the agreement were somewhat unsatisfactory to the Department. That body, when the agreement came before it for consideration, took the ground that as that reservation had been established by Executive order, it could be restored to the public domain without the consent of the Indians, and passed an act vacating and restoring to the public domain that portion of the reservation which the Indians had agreed to cede, the same to be thrown open to settlement and entry by proclamation of the President. This act becomes a law without the approval of the President. . . .

The act provides that the net proceeds of the lands so restored shall be set apart in the Treasury of the United States for the time being, but subject to such future appropriation for public use as Congress may make, and that until so otherwise appropriated may be subject to expenditure by the Secretary of the Interior from time to time for certain specific purposes for their benefit, and in the promotion of education, civilization, and self-support among the said Indians. . . .

The action of Congress in relation to this reservation constitutes legislative declaration as to the status of Executive order reservations. It is to be regretted that this declaration was not made prior to the appointment of a commission to treat with the Indians occupying this reservation for a relin-

quishment of a portion of it, for by the fact that a commission was sent to negotiate with them the Indians were led to believe through the councils held by the Commission that they possessed title to the lands and ought to be consulted as to the disposal thereof. The fact that their supposed rights have been ignored and that a portion of their reservation has been vacated and restored without their consent may cause them to feel sorely aggrieved when the land shall be opened to settlement after the survey thereof. At XLV-XLVI.

10A. REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS (1893) (EMPHASIS ADDED).

COMMISSIONS AND NEGOTIATIONS FOR REDUCTION OF RESERVATIONS.

Shoshone Reservation, Wyoming. — Under the provision of a clause contained in the Indian appropriation act approved March 3, 1891 (26 Stats., 1010), the Secretary of the Interior appointed three commissioners to negotiate with the Indians of Shoshone or Wind River reservation in Wyoming for the surrender of a portion of their reserve. . . .

Pyramid Lake Reservation, Nevada. — As stated in office report for the year 1892, an agreement was negotiated October 17, 1891, with the Pah Ute Indians residing upon the Pyramid Lake Reservation in Nevada, for the surrender of the southern portion of the reservation embracing the town of Wadsworth. At 30.

Siletz Reservation, Oregon. — October 1, 1892, an agreement was concluded with the Indians of this reservation, whereby they ceded to the United States, for the sum of $100,000, all their claim, right, title, and interest in and to all the unallotted

lands of the reservation, except five sections of timber land, the amount ceded being about 178,840 acres. . . .

Nez Perce Reservation, Idaho. — May 1, 1893, an agreement was concluded with the Nez Perces in Idaho, by which they ceded to the United States all their unallotted lands (except some 30,000 acres of timber) for the sum of $1,626,222 and certain other considerations. The agreement has not yet been submitted to you for transmittal to Congress. . . .

Yankton Reservation, S. Dak. — The report of the Yankton Commission, dated March 31, 1893, and filed in the Department May 27, 1893, submitted an agreement concluded with the Yankton Sioux Indians December 31, 1892, by which they ceded to the United States all their surplus lands, some 168,000 acres for the sum of $600,000 plus $20 for each male adult of the tribe. At 32.

11A. ANNUAL REPORT OF THE COMMISSION OF INDIAN AFFAIRS (1894) (EMPHASIS ADDED)

. . . but of recent years Congress has been in the habit of attaching to this act agreements with various Indian tribes and of ratifying them therein, instead of ratifying them in separate acts, as in former years. This adds to what is called an appropriation for the Indian service large sums which are really payments for lands purchased by the Government primarily for the benefit of its white citizens. At 2.

AGREEMENTS WITH INDIANS.

Siletz, Yankton, and Nez Perces. — The agreement concluded with the Siletz Indians in Oregon, October 1, 1892, that with the Yankton Sioux in South Dakota, concluded December 31, 1892, and

that with the Nez Perces in Idaho, concluded May 1, 1893, referred to in my last annual report, were ratified by the act of Congress approved August 15, 1894 — the Indian appropriation act. Under these agreements *some 880,000 acres of land will be restored to the public domain for disposition as provided in said act. At 28.*

PYRAMID LAKE AND WALKER RIVER.

That agreement has not been ratified, but Senate bill No. 99, Fifty-third Congress, second session, now pending, provides for vacating and restoring to the *public domain* the entire Walker River Reservation, and also a portion of the Pyramid Lake Reservation, which portion embraces a larger extent of territory than that included in the agreement. At 26-27.

11B. REPORT OF THE SECRETARY OF THE INTERIOR H. EXEC. DOC., 53RD CONG., 3RD SESS. VOL. 14 (1894-95) (EMPHASIS ADDED).

There are two means chiefly relied upon — education and *allotments of land in severalty*. . . .

I do not question the advisability of allotting land to Indians in severalty, but I do most seriously question the propriety of this course before the Indians have progressed sufficiently to utilize the land when taken. The allotments should be made to the Indians in severalty for the good of the Indians, for the advancement of the Indians, not for the purpose of obtaining land connected with the Indian reservation to satisfy the insatiable desire of border men, who obtain it frequently, not for homes, but for speculation. . . .

I urge a treatment of Indian land based solely upon the purpose of realizing from it for its owners

the highest possible value. What is best for the Indians — to keep their land or to sell it? If the members of a tribe have reached a state sufficiently civilized to be able to progress still further by selling a portion of their land, then sales should be made; but the land should not be purchased from the Indians at the best bargain the United States can make. It should be sold for the Indians by the United States, the Department acting as a faithful trustee, and obtain for the Indians every dollar the land will bring. At III-IV.

AGREEMENTS. — The agreements concluded in 1892 and 1893 with the Nez Perces, Yankton Sioux, Yuma, and Siletz Indians, were ratified by the last session of Congress and will result in *restoring to the public domain some 921,000 acres of land*. At IX.

12A. REPORT OF THE SECRETARY OF THE INTERIOR, H. DOC. 54TH CONG., 1ST SESS. VOL. 14 (1895-96) (EMPHASIS ADDED).

The area of public lands undisposed of at the close of the fiscal year amounted to 599,083,495 acres. This aggregate does not include Ohio, Indiana, and Illinois, in which a few isolated tracts may remain. It is also exclusive of Alaska, containing approximately 370,000,000 acres, and military and *Indian reservations,* reservoir sites, and timber reserves, *which may in the future be added to the public domain.* At XVII.

13A. ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS (1896).

COMMISSIONS.

Crow, Flathead, Northern Cheyenne, Fort Hall, Uintah, and Yakima. — The Indian appropriation

act for the current fiscal year authorizes the appointment by the Secretary of the Interior of a commission to consist of three persons, not more than two of whom shall be of the same political party and not more than one of whom shall be resident of any one State, to negflotiate with the following Indians, viz: The Crow and Flathead Indians in Montana for the cession of portions of their respective reservations; the Northern Cheyennes and Crows for the removal of the Northern Cheyennes from their present reservation on the Rosebud River to the southern portion of the Crow Reservation; the Indians of the Fort Hall Reservation in Idaho, the Uintah Reservation in Utah, and the Yakima Reservation in Washington, for the surrender of any portions of their respective reservations, and for such modification of existing treaties with them as may be deemed desirable by the Indians and the Secretary of the Interior; any agreement thus negotiated to be subject to ratification by Congress. At 42.

13B. REPORT OF THE SECRETARY OF THE INTERIOR (1896) H. DOC. 54TH CONG., 2D SESS. VOL. 12 (1896-97) (EMPHASIS ADDED).

The public domin, or public lands—the property of the nation, and subject to legislative control and disposition by Congress alone—is the area known as public lands acquired by treaty, capture, cession by States, conquest or other acquisition, and purchase. At VI.

It is also exclusive of military and *Indian reservations*, reservoir site and timber reservations, and tracts covered by selections, filings, railroad grants, and claims as yet unadjudicated, a part of which *may in the future be added to the public domain.* At VII.

COMMISSIONS.

The Crow and Flathead Indians in Montana for the *cession* of portions of their respective reservations; the Northern Cheyennes and Crows for the removal of the Northern Cheyennes from their present reservation on the Rosebud River to the southern portion of the Crow Reservation; the Indians of the Fort Hall Reservation in Idaho, the Uintah Reservation in Utah, and the Yakima Reservation in Washington, for the surrender of any portions of their respective reservations, and for such modification of existing treaties with them as may be deemed desirable by the Indians and the Secretary of the Interior; any agreement thus negotiated to be subject to ratification by Congress. At XLVI-XLVII.

THE UNCOMPAHGRE INDIAN RESERVATION.

A commission was appointed to allot the lands, and was instructed to inform the Secretary of the Interior what portion of the Uncompahgre Reservation in Utah *was not required for allotment or was unfit for agricultural uses, in order that the same might be restored to the public domain and opened for settlement.* That commision was duly appointed, but had difficulty in finding sufficient agricultural lands within the reservation to make the allotments, and was totally unsuccessful in persuading the Uncompahgres to agree to pay $1.25 per acre for the same. At XLVIII.

[Reproduced at the National Archives]

51st Cong., 1st Session, Bill No. 183

Referred to the Committee on Indian Affairs
Feb. 28, 1990

United States Senate
23-3

Copy, House Bill No. 183.

Introduced by Mr. Norbeck.

First Session Legislature of the State of South Dakota.

A Memorial to Congress praying for the opening to settlement under the Homestead Law, of the Yankton Indian Reservation in Charles Mix County, in South Dakota.

To the Congress of the United States:

Your Memorialists, the Legislature of the State of South Dakota, would respectfully request that you take the necessary steps to open to settlement under the Homestead law, the Yankton Indian Reservation in Charles Mix County, in South Dakota, or so much thereof as is not required for the use of the Indians resident thereon.

We would represent that said Reservation embraces about eighteen Congressional townships, and that only about 1900 Indians are resident thereon. That they occupy only a very small portion thereof, and that nearly the entire Reservation is unoccupied and is not used for pasturage, meadow or agricultural purposes except to a slight extent.

That it is surrounded on all sides by a thickly settled agricultural community. That the existence of this large tract of wild land in their midst is a constant danger and menace by reason of the immense prairie fires which annually sweep over it unchecked.

The Secretary of State is hereby directed to transmit certified copies of the foregoing Memorial to the Secretary of the Interior and to the Senators and Representatives of South Dakota in Congress.

Approved January 31st 1890, at 4:10 p.m.

/s/ J. H. Fletcher
Acting Governor

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,

Washington, July 27, 1892.

Gentlemen:

The following instructions are given for your guidance in the discharge of your duties as commissioners to negotiate with the Yankton Sioux Indians for the cession of their surplus lands, the authority for your appointment being contained in the appropriation of $11,500, made by the Indian Appropriation Act for the current fiscal year, "To enable the Secretary of the Interior to negotiate with any Indians for the surrender of portions of their respective reservations, any agreement thus negotiated being subject to subsequent ratification by Congress."

The Yankton Sioux Indian Reservation, in South Dakota, was created by the first article of the treaty with the Yankton Sioux of April 19, 1858 (11 Stats., 743), by which they ceded to the United States all the lands then owned, possessed or claimed by them, except four hundred thousand acres described as follows:

"Beginning at the mouth of the Naw-izi-wa-koo-pah or Choteau River and extending up the Missouri River thirty miles; thence due north to a point; thence easterly to a point on the said Choteau River; thence down said river to the place of beginning, so as to include the said quantity of four hundred thousand acres".

As actually surveyed it contains 430,405 acres. There has been allotted and patented to the Indians some 167,325 acres under the Act of February 8, 1887 (24 Stats., 388). The allotments made under the Act of February 28, 1891, have not yet been examined and approved but it is estimated that they will include about 95,000 acres. Some 852 acres have been reserved for government and religious purposes, leaving a surplus of some 168,000 acres.

The treaty makes no provision regarding the cession or relinquishment of the reservation or any portion thereof.

You will call a full council of the Indians and submit the subject for their consideration. No undue pressure should be used to induce them to cede the surplus lands, but the adventure to be derived from such action should be fully placed before them. Every member of the tribe has received an allotment of not less than 80 acres of agricultural land, or a double quantity of grazing land, averaging over 150 acres for each member of the tribe.

The surplus lands in their present state of reservation cannot be made to yield any considerable income, while the money which will be paid for their relinquishment, placed at 5 per cent interest will give them an income which will be sufficient to afford them all the assistance they need.

If they are unwilling to cede all the surplus land you will endeavor to obtain the relinquishment of such part thereof as they may be willing to part with.

If they consent to the relinquishment of the whole or any portion of the surplus lands the terms and conditions of sale should then be agreed upon, which should be just and equitable to the Indians as well as the United States. It is understood that some of these lands are very valuable and will be eagerly sought after. It is therefore suggested the agreement provide for their appraisement and sale to the highest bidder.

The terms and conditions agreed upon in council should be reduced to writing and incorporated in the accompanying form of agreement which should be signed by at least a majority of the male adults of the members of the tribe.

This agreement should also provide for the disposition of the funds to be derived from the cession. If possible the whole amount, or the larger portion, should constitute a fund, the interest of which shall be applied for such pur-

poses as may be agreed upon. Provision should not be made for the per capita payment of a large portion of the purchase money.

If possible, a portion of the interest should be made available for the payment of local taxes on the allotted lands during the trust period. (See Article IV of accompanying form).

When the agreement is freely and properly signed, your certificates and the certificate of the official Interpreter, should be attached to the instrument.

The proceedings of the council should be reduced to writing and attested by your signatures and that of the official Interpreter.

The Indians should be informed that the agreement will not be valid or binding until ratified by Congress.

You are authorized to employ an Interpreter or Interpreters when necessary and the services of the Agency Interpreter are not available.

The accompanying form of agreement is transmitted for your guidance and as an indication of the views of this office as to the proper disposition of the funds, but you are not required to adhere to the same absolutely.

Very respectfully,

/s/ T J Morgan
Commissioner.

(Allen)

P.

5A. REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS (1888) (EMPHASIS ADDED).

On the Lake Traverse Reservation (Sisseton Agency) in Dakota, all the Indians entitled thereto have received allotments, except some 25, and most of these have selected their tracts and will soon receive their allotments. The schedules of allotments already made were certified to by this office on May 10, 1888. They were transmitted to the Secretary and by him approved, and the Commissioner of the General Land Office was directed to cause patents to issue to the allottees, as provided in the fifth section of the severalty act. There remains on the reservation 788,900 acres of unallotted lands, of which surplus the Indians desire to dispose of some portion, and it would doubtless be greatly to their advantage to do so; but no funds are available to defray the necessary expenses of negotiations with them for this purpose. . . .

The coming on of the winter of 1887-'88 necessitated the discontinuance of allotment work on the Siletz, Yankton, Crow and Winnebago Reservations, and for want of funds it could not be resumed in the spring. Work was discontinued on the Absentee Shawnee and Pottawatomie Reservations on the 3d of April last, and for the same reason has not been resumed. At XXXVII.

On the Sisseton Reservation only have allotments been practically completed. . . .

Progress of allotment work elsewhere has been slow, owing to the time required to make surveys preliminary to allotting, and the late date at which the appropriation bill passed. . . .

Considerable opposition to the allotment policy has been developed from two sources. Those who

believe in the wisdom of tribal ownership, and in the policy of continuing the Indian in his aboriginal customs, habits, and independence, oppose it because it will eventually dissolve his tribal relations and cause his absorption into the body politic. On the other hand, those who expected that the severalty act would immediately open to public settlement *long-coveted* Indian lands, oppose it because they have learned that these expectations will not be realized. At XXXVIII.

The authority under which, for the past five or six winters, these Indians have cut and marketed their dead-and-down timber has been granted each year by the Department, on recommendation of this office, said recommendation being based on a decision rendered May 19, 1882, by Hon. H. M. Teller, then Secretary of the Interior, in regard to the right of the Sisseton Agency Indians to market such timber from their reservation in Dakota. The decision was as follows:

Sir: I have your letter of the 18th ultimo, asking that I approve of the application of Agent Crissey, of the Sisseton Agency, to allow the Indians on that reservation to cut dead and fallen timber and to sell the same. The Indians of that agency hold their reservation by virtue of a treaty made with the United States in 1867. It is recited in the treaty that, in consideration of certain cessions made by the Indians to the United States and the faithful conduct of the Indians, the Government set apart the reservation for the use of said Indians as a permanent home. It is not claimed, however, that these Indians hold by other and different title from other Indians who occupy their reservations by treaty stipulations. . . .

The fee to the reservation is in the Government, and the right of the Indians to the occupation

thereof is as unquestioned as the right of the Government to the fee. In such occupation they can not be disturbed by the Government, save through its legislative department; and it ought not to be supposed that such occupation will be interfered with without the consent of the Indians, unless, by misconduct on their part, the right to occupy should be lost. At XLIII-XLIV.

It proposed to set off from the Sioux Reserve five separate reservations for the Rosebud, Pine Ridge, Lower Brule, Cheyenne River, and Standing Rock Indians, respectively, and to reduce the Crow Creek Reserve (which is separated from the Sioux Reserve by the Missouri River), *and to restore the remaining lands of these two reservations to the public domain. By the boundaries proposed the lands restored would amount to over 11,000,000 acres and the lands retained to a little less than 11,000,000 acres. . . .*

The Indians were to have lands allotted to them in severalty and to receive patents therefore. . . .

The lands restored to the public domain were to be sold to settlers under the provisions of the homestead acts for 50 cents per acre, but $1.50 was to be paid for lands entered for town-site purposes. At LXXIII-LXXIV.

5B. REPORT OF THE SECRETARY OF THE INTERIOR, H. EXEC. DOC. 50TH CONG., 2D SESS. (1888-1889) Vol. 10 (EMPHASIS ADDED).

A beginning has already been made upon another line of policy, from which much appears justifiably to be hoped—the complete dispersion of the tribes and bands by the establishment of individuals as landowners, and the investment of them with the dignity, rights, and privileges of citizenship in the

State and nation. At another point I will exhibit what has been accomplished during the past year in the prosecution of this policy. At XXXI.

INDIAN COUNTRY.

The entire extent of territory *now* in a state of reservation for Indian purposes, including all portions of the Indian Territory, whether in fact occupied or unoccupied by Indians, is 112,413,440 acres; being equivalent to an average of 456 acres for each Indian, computed on the last reported number of the total population, including those estimated as outside the reservations. Of this area, about 81,020,129 acres are within the scope of the *general allotment law of 1887*, and afford an average for the population residing upon such lands, amounting to 173,985, of about 465 acres to each. *It will be seen that, by the execution of the general allotment law and breaking up of the reservations a wide area of the public domain will be opened to settlement. . . .* At XXXIV.

The work of allotting lands in severalty to Indians which was begun, under the provisions of the act of February 3, 1887 (24 Stats., 388), on seven reservations, the Yankton and *Lake Traverse Reservations* in Dakota Territory, the Winnebago Reservation in Nebraska, the Pottawatomie Reservation in the Indian Territory, the Crow Reservation in Montana, the Fond du Lac Reservation in Minnesota, and the Siletz Reservation in Oregon, was suspended early in 1888, because the funds appropriated for employment of the special agents, and for other expenses incident thereto, had been exhausted. . . .

On the Lake Traverse Reservation the field work had been completed, allotments were made to each Indian belonging thereon, and the schedules of the

allotments were presented to this Department for approval and for instructions for patents to be issued to the allottees. At XXXIX.

THE GREAT SIOUX RESERVATION.

By the treaty of 1868 with various bands and tribes of the Sioux nation of Indians—a treaty which, in all the circumstances of its negotiation, as the final composition of bloody disturbances of long continuance urged on the part of the Government by citizens and officers of the Army of the first rank and character, as well as by unusually solemn and particular expressions of engagement, is peculiarly stamped with the obligation of observance by the United States—a reservation of very large extent, then comprehending the most of the Territory of Dakota lying west of the Missouri, was established to be a perpetual home for these people, with specific guaranty on the part of the Government that no white man should be allowed to enter it, to pass through it or across it, without the consent of the Indians first had and obtained; and with the further clause in the twelfth article that— . . .

No treaty for the cession of any portion or part of the reservation herein described which may be held in common shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians occupying or interested in the same. . . .

In *1876* an agreement was made by which the Sioux relinquished a portion of this reservation, embracing the Black Hills country and some territory to the northward, and that agreement was ratified by Congress, although it does not appear to have received the consent, by signature, of three-fourths of the Indians as required under the treaty of 1868. The reservation as so reduced, however,

contains a little more than 22,000,000 acres, and there is now upon it a population exceeding 23,000 Indian people, who are rationed and governed through five agencies provided by law and located upon the reserved territory. . . .

The act of the present Congress, approved on the 30th of April, 1888, contains elaborate provisions, the general purposes of which are to reduce the reserved area into six separate reservations and *cede* the remainder, above 11,000,000 acres, to the Government; to open the *ceded portion* to homestead settlement, except so far as shall be necessary for the uses of two railroad companies who have made agreements with the Sioux heretofore for rights of way and station-grounds; to collect from homesteaders upon making final proof, for the use of the Indians, fifty cents per acre of the lands homesteaded, to apply the proceeds to the education and civilization of the Indians, and facilitate the allotment of the separate reservations in severalty and their establishment in independence thereon, extensive advancements being, in the mean time, authorized for these purposes; and to do so administer their affairs that, in the end, the people of this nation may be reclaimed from barbarism and established in citizenship. At LVI.

As has been said, the price proposed seemed inadmissible. It would require for no more land than is now desired to be *ceded* the payment of nearly as much money as was paid to France for the entire territory of Louisiana, merely to extinguish the Indian right of occupancy, the fee being, according to our theory, already in the Government. It would, besides, fix a probable minimum, at least, for the several millions of acres which must, at a later period, after allotments in severalty have been perfected and their improved condition thereunder shall

warrant it, *be further purchased and opened to settlement.*

The policy of Congress is wisely declared by the act to require the disposition of these lands only to homestead settlers, to be paid for after the full period of five years' residence and improvement, which now entitled homesteaders *upon the public domain elsewhere* to a patent without price. At LXIV-LXV.

The other features of the proposed amendments require no further explanation of the reasons for making them than is suggested by their reading, to one who is acquainted with the circumstances. . . .

Attention is invited to the interesting information and full presentment of the various aspects of the problem of *opening this reservation* in the elaborate report of the Commission, which is appended hereto. It appears satisfactorily that, restricted to the sole means of argument and explanation, their full duty was done in their submission of the act. At LXVI.

AGREEMENTS NEGOTIATED WITH INDIANS IN THE STATE OF MINNESOTA AND IN DAKOTA, MONTANA, IDAHO, AND WASHINGTON TERRITORIES.

The agreement entered into with the Gros Ventre, Piegau, Blood, Blackfeet, and River Crow Indians in Montana, for dividing a portion of their reservation into three separate reservations for the use and occupation of the Indians belonging respectively to the Fort Peck Agency, the Fort Belknap Agency, and the Blackfeet Agency, and for relinquishment of the Indian title to the remainder, was ratified by act of Congress approved May 1, 1888. The result of this agreement is the *extinguishment of the Indian title* to a vast area of country, estimated at about 17,500 acres, . . .

These Indians for whom appropriations have heretofore been made for their support, as a gratuity from the Government, will now receive the benefits of such appropriations made as payment of consideration money for the *portion of their territory ceded* by the agreement. At LXVII.

And that this will remain so for many years to come is apparent, when it is considered that *in addition* to 22,000,000 acres of vacant public land open to settlement there are 27,000,000 acres of land in Dakota *within the reservations of the Indian tribes, which will sooner or later be opened.* At CXXII.

6A. REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS (1889) (EMPHASIS ADDED).

Unexpectedly called to this responsible position, I entered upon the discharge of its duties with a few simple, well-defined, and strongly-cherished convictions: . . .

First.—The anomalous position heretofore occupied by the Indians in this country can not much longer be maintained. *The reservation system belongs to a "vanishing state of things" and must soon cease to exist. . . .*

Second.—The logic of events demands the absorption of the Indians into our national life, not as Indians, but as American citizens. At 3.

This whole reservation system is an abomination that should cease to exist. At 8.

During the year 1,341 patents have been issued to the Indians of the Lake Traverse Reservation in Dakota, which will be delivered at an early day. The allotment of lands on this reservation having been practically completed, recommendation was made June 21, 1889, that an officer or officers be designated to *negotiate for the relinquishment of*

such portion of the surplus lands as the Indians might be willing to cede, and instructions for the guidance of such commission have been prepared and submitted for your approval. At 16.

The second great economical fact is that the lands known as Indian reservations now set apart by the Government for Indian occupancy aggregate nearly 190,000 square miles. This land, for the most part, is uncultivated and unproductive. When the Indians shall have been properly educated they will utilize a sufficient quantity of those lands for their own support and will *release the remainder that it may be restored to the public domain* to become the foundation for innumerable happy homes; and thus will be added to the national wealth immense tracts of farming land and vast mineral resources which will repay the nation more than one hundred fold for the amount which it is proposed shall be expended in Indian education. At 112.

6B. REPORT OF THE SECRETARY OF THE INTERIOR. H. EXEC. DOC. 51st CONG., 1ST SESS. VOL. II (1889-90) (EMPHASIS ADDED).

Thus the aggregate of these *two cessions* is 5,439,865.60 acres. By the thirteenth section of this appropriation act, provision was made that the lands so acquired, except the sixteenth and thirty-sixth sections, should be *opened for settlement by proclamation of the President, and disposed of to actual settlers under the homestead laws only.* At IV.

THE SIOUX COMMISSION.

With the allotments the reservation disappears, for after the allotments are made what remains is sold to the Government and the proceeds thereof become a trust fund, the interest on which is paid to

the particular tribe, thus producing a reliable annual income. At L.

7A. REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS (1890) (EMPHASIS ADDED).

The Indians, with whose welfare and civilization he is charged, are widely scattered, and the territory in what is known as Indian reservations embraces not less than 181,000 square miles. At V.

It has become the *settled policy* of the Government to *break up reservations*, destroy tribal relations, settle Indians upon their own homesteads, incorporate them into the national life, and deal with them not as nations or tribes or bands, but as individual citizens. The American Indian is to become the Indian American. How far this process has advanced during the past year will be shown under the head of the *reduction of reservations* and allotment of lands. At VI.

It was further settled in the case of the Cherokee Nation *v.* The State of Georgia (5 Peters, p. 1) that the Indians had an unquestionable and theretofore an unquestioned right to the lands they occupied *until* that right of occupancy was extinguished by voluntary *session* to the Government; . . . at XXIII.

REDUCTION OF RESERVATIONS.

At the date of the last annual report of this office there were one hundred and thirty-three Indian reservations in the United States (counting the twenty-two small reserves of the Mission Indians of California as one only and the nineteen Pueblo reserves in New Mexico also as one), having an aggregate area of about 116,000,000 acres or 181,250 square miles, which is greater than that of the New England and Middle States combined, greater than the aggregate area of the States of Ohio, Indiana, Illinois, and Kentucky, and nearly equal to

the combined area of the two Dakotas and Montana. To carry the comparison further, it is larger by half than the United Kingdom of Great Britain and Ireland, larger than Sweden or Norway, and nearly as large as either France or Spain. The total Indian population of the United States, exclusive of Alaska, was by the census of 1889, 250,483, and exclusive of the five civilized tribes in Indian Territory, 185, 283. At XXXVII.

Where it is suitable for agricultural or grazing purposes, it is the present policy of the Government to allot land in severalty to the Indians within their respective reservations . . . to patent these individual holdings, with a restriction against alienation for twenty-five years, or longer, in the discretion of the President, and to purchase from the respective tribes any or all of the surplus land remaining after the allotments have been made. The general law for this is the allotment act of February 8, 1887 (24 Stat. p. 388), applicable to all reservations, except . . . at XXXVIII.

In numerous instances, where clearly desirable, Congress has by special legislation authorized negotiations with the Indians for portions of their reservations without waiting for the slower process of the general allotment act, which involves the survey of the land, the allotment in severalty by special agents appointed by the President for that purpose, and negotiations with the Indians for the cession and relinquishment of their surplus unallotted lands. . . .

It is estimated that under such special legislation about 13,000,000 acres of land have been secured by cession from the Indians during the past year; and there are agreements now pending before Congress, through which, if ratified, the Government will acquire some 4,500,000 acres more; all of which

will, under the operation of these laws, be open *to white settlement* in the near future. . . .

Of the land actually acquired, about 9,000,000 acres are in North and South Dakota, secured from the Sioux (act of March 2, 1889, 25 Stat., p. 888), and about 4,000,000 acres in Minnesota,* acquired from the Chippewas (act of January 14, 1889, 25 Stat., p. 642). *The agreements now pending in Congress will, if ratified, restore to the public domain* about 1,600,000 acres in North Dakota, in the Fort Berthold Reservation; about 660,000 acres in South Dakota, in the *Lake Traverse* (Sisseton,) *Reservation;* about 185,000 acres in Idaho, in the Coeur d'Alene Reservation; about 1,095,000 acres in Colorado, being the whole of the southern Ute Reservation; and about 941,000 acres in Oklahoma Territory, now embraced in the Pottawattomie, Iowa, and Sac and Fox Reservations; a grand total of upwards of 17,400,000 acres, or *about one seventh of all the Indian lands in the United States.* . . .

This might seem like a somewhat rapid reduction of the landed estate of the Indians, but when it is considered that for the most part the land relinquished was not being used for any purpose whatever, that scarcely any of it was in cultivation, that the Indians did not need it and would not be likely to need it at any future time, and that they were, as is believed, reasonably well paid for it, the mat-

* The Chippewas ceded all of their lands in Minnesota embraced in the several reservations occupied by them, except the White Earth Reservation, of which they ceded four entire townships, and excepting, also, the Red Lake Reservation of which they ceded perhaps three-fourths; but it can not be ascertained how much or just what particular portions of said reservations, except White Earth and Red Lake have actually been relinquished to the United States until the Indians shall have selected and received the allotments to which they are entitled under said act. At XXXVIII-XXXIX.

ter assumes quite a different aspect. The sooner the tribal relations are broken up and *the reservation system done away* with the better it will be for all concerned. . . .

As a general rule, I would not advise the purchase of the surplus lands until the Indians have been located upon and absolutely secured in their individual holdings. At XXXVIII-XXXIX.

As already stated, the general allotment act of February 8, 1887, confirms the Indian title in all existing reservations. It provides that in all cases where any tribe or band of Indians has been or shall hereafter be located upon any reservation created for their use, "either by treaty stipulation or by virtue of an act of Congress, or by executive order, setting apart the same for their use," the President of the United States may, whenever in his opinion any reservation or any part thereof is suitable for the purpose, allot the lands of said reservation in severalty to the Indians located thereon, in quantities as specified; and that after lands shall have been so allotted, or sooner, if in the opinion of the President it shall be for the best interests of the Indians, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall from time to time consent to sell, "upon such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians." . . .

I desire to ask special attention to the *great importance* of the early ratification of agreements made with Indians for the *cession of portions of their reservations*. Delay in such matters is not understood by them, often works hardship, creates

unrest, begets distrust, and greatly retards their progress. It should be remembered that while these agreements often involve the appropriation of large sums of money, the amount is almost wholly reimbursable from the sale of the land.

CHIPPEWA INDIANS IN MINNESOTA.

Since the date of the last annual report, the 1341 patents issued to the Sisseton and Wahpeton Indians, on the Lake Traverse Reservation, in North and South Dakota, have been delivered to the Indians. The agreement, however, for the cession of their surplus lands now pending in Congress, provides for additional allotments, so that each Indian belonging to the reservation shall have 160 acres of land. At XLV.

The division of Indian lands in severalty and the ultimate *destruction* of the tribal and *reservation systems* being inevitable, the Indians should be taught to look forward to this and be prepared, so far as practicable, to meet it. At LXIX.

7B. REPORT OF THE SECRETARY OF THE INTERIOR, H. EXEC. DOC. 51ST CONG., 2D SESS. (1890-91) (EMPHASIS ADDED).

And again, while this Territory has been forming, *great additions from the Indian reservations have been made to the public domain* soon to be opened to settlement. The various Indian commissions have made *agreements*, now awaiting Congressional action, with different tribes for many *millions of acres*. At I.

INDIAN AFFAIRS.

But it needs to be said that a much larger area of land than is necessary is held for Indian occupancy. . . .

There has been a *reduction* during the fiscal year by *cession* of Indian title to reservations under ratified agreements to the extent of about 13,000,000 acres of lands heretofore held by them, leaving the aggregate area of reserved land at this time over 103,000,000 acres. . . . *The surplus held in reservation appears therefore to be unreasonably large. A large portion of it is lying idle, and is a bar to the Indians' progress, and our country's development. To restore this to the public domain* will work no hardship to the Indians, if the *cessions* are made upon terms as fair as have characterized the agreements recently negotiated. At XXIII-XXIV.

INDIAN CESSIONS.

THE GREAT SIOUX IN NORTH AND SOUTH DAKOTA.

THE CHIPPEWAS IN MINNESOTA. AT XXVI.

OTHER CESSIONS MADE.

There are pending in Congress agreements as follows: For the cession of about 1,600,000 acres of the Fort Berthold Agency Reservation in North Dakota, negotiated under provisions of the act of May 15, 1886 (24 Stats., 44); for about 184,960 acres of the Coeur d'Alene Reservation in Idaho, negotiated under the act of March 2, 1889 (25 Stats., 1003); for about 600,000 acres of the Lake Traverse Reservation in South Dakota, negotiated under the provisions of section 5 of the general allotment act of February 8, 1887 (24 Stats., 388); for about 1,095,000 acres of the Southern Ute Reservation in Colorado, negotiated under the fourth section of the act of May 1, 1888 (25 Stats., 133), and for about 7,871 acres of the Flathead Indians in Bitter Root Valley, Montana, negotiated under the

provisions ofthe act of March 2, 1889 (25 Stats., 871). These should all have early attention by Congress. At XXVII.

CESSIONS BY VARIOUS TRIBES THROUGH THE CHEROKEE COMMISSION.

OTHER COMMISSIONS TO NEGOTIATE *CESSIONS.*

The appointment of the following commissions was also authorized during the last session of Congress: . . . at 28.

NORTHERN BAND OF CHEYENNES. AT XXVIII.

TURTLE MOUNTAIN BAND.

WARM SPRINGS INDIANS. AT XXIX.

CROW INDIANS AT XXX.

Under the authority contained in the fifth section of the general allotment law (24 Stats., 388) successful negotiations were conducted with the Sisseton Indians in South Dakota for the cession of their surplus lands, and the agreement entered into for this purpose, which was submitted to Congress early in the session, passed the Senate, but failed to receive favorable consideration in the House of Representatives. The failure to ratify this agreement is a matter to be greatly regretted. . . . At XXXV.

8A. SIXTEENTH ANNUAL REPORT OF COMMISSIONER OF INDIAN AFFAIRS (1891) (EMPHASIS ADDED).

If the policy of allotting lands is conceded to be wise, then it should be applied at an early day to all alike wherever the circumstances will warrant. If we have settled upon the breaking up of the tribal relations, the extinguishment of the Indian titles to

surplus lands, and the restoration of the unneeded surplus to the *public domain*, let it be done thoroughly. If reservations have proven to be inadequate for the purposes for which they were designed, have shown themselves a hindrance to the progress of the Indian as well as an obstruction in the pathway of civilization, let the reservations, as speedily as wisdom dictates, be utterly destroyed and entirely swept away. At 8.

The policy above outlined will eventually make all Indians citizens of the United States, when the *Indian reservation will no longer appear on our maps*, and the autonomy of the tribes, a fact to us, will be mere history to the generations that will come. At XXVI.

EARLY ALLOTMENTS.

The policy of dividing lands owned or occupied in common by an Indian tribe among its several members was inaugurated by act of March 3, 1839, which authorized division of the lands of the Brothertown Indians (Wisconsin) by a commission of five of their principal head men, and for the issuance of patents in fee simply to the Indians and their heirs and assigns. . . .

PROGRESS IN ALLOTMENTS.

In 1887 the first *general* law was enacted (24 Stats., 388), and by its provisions lands were to be given to the several members of a tribe (except married women), in quantities differing according to the age of the allottee, or status as the head of a family, or otherwise. At 40.

REDUCTION OF RESERVATIONS.

The work of reducing the area of the reservations, by extinguishing by purchase from the Indians their

title to the land and its *restoration to the public domain*, has been carried forward rapidly, as is shown in the following detailed statements: . . .

Counting the 22 small reserves of the Mission Indians of California as only one reserve and the 19 Pueblo reserves of New Mexico as one also, the number of reservations as given in the annual report of this office for 1890 was 138, having an aggregate area of about 104,314,349 acres, or 162,991 square miles. This amount is about 12,071,380 acres, or 18,861 square miles, less than the amount reported in 1889, while at the present time there are five more reservations than in 1889, owing to the division of the Great Sioux Reservation, as provided by act of March 2, 1889. . . .

The agreements ratified by act of Congress approved February 13, 1891 (26 Stats., 749), *restored to the public domain* 391,184.65 acres from the Sac and Fox Reservations, in Oklahoma, including 25,194.61 acres for school purposes; and from the Iowa Reservation, in the same Territory, 219,446.27 acres, including 12,271.75 acres for school purposes. The ratification of agreements by the act of March 3, 1891 (26 Stats., 989), *restored to the public domain* from the Pottawatomie Reservation, Oklahoma, 309,134.77 acres, including 22,650.44 for school purposes; from the Cheyenne and Arapaho Reservation, Oklahoma, about 3,000,000 acres; from the Coeur d'Alene Reservation, Idaho, about 185,000 acres; from the Fort Berthold Reservation, North Dakota, about 1,600,000 acres; *from the Lake Traverse Reservation*, South Dakota, about 660,000 acres, and from the Crow Reservation, Montana, about 1,800,000 acres; a total of about 8,164,765 acres. At 44.

The *ceded portion* of the Fort Berthold Reservation, North Dakota, consisting of about 1,600,000

acres has been *thrown open to settlement* by proclamation of the President. . . .

The *ceded lands* of the Coeur d'Alene Reservation, Idaho, were *opened to settlement* from the date of the approval of the act. . . .

Allotments of land are being made on the Lake Traverse Reservation, South Dakota, and the Cheyenne and Arapaho Reservation, Oklahoma, and surveys are in progress upon the Crow Reservation, Montana, and when they are completed and the terms of the act ratifying the respective agreements with the Indians of the several reservations shall have been fully complied with, the unalloted or vacant lands embraced within the *ceded portions will be thrown open to settlement*. . . .

The agreement with the Indians of the Southern Ute Reservation, in Colorado referred to in my last annual report, was not ratified by the last Congress.

NEGOTIATIONS FOR FURTHER REDUCTIONS.

The Indian appropriation act for the fiscal year ending June 30, 1892 (26 Stats., 1010), contains the following provisions: . . .

To enable the Secretary of the Interior in his discretion to negotiate with any Indians for the surrender of portions of their respective reservations, any agreement thus negotiated being subject to subsequent ratification by Congress, $15,000 or so much thereof as may be necessary. At 45.

RESERVATIONS SHOULD NOT BE REDUCED TOO RAPIDLY.

While perhaps it is possible to push such work too rapidly, I do not hesitate to say that the ultimate destruction of the entire system of reservations is inevitable. There is no place for it in our present condition of life, and it must go. The millions of

acres of Indian lands now lying absolutely unused are needed as homes for our rapidly increasing population and must be so utilized. Whatever right and title the Indians have in them is subject to and must yield to the demands of civilization. They should be protected in the permanent possession of all this land necessary for their own support, and whatever is taken from them should be paid for at its full market value. But it can not be expected under any circumstances that these reservations can remain intact, hindering the progress of civilization, requiring an army to protect them from the encroachments of home-seekers, and maintaining a perpetual abode of savagery and animalism. The Indians themselves are not slow to appreciate the force of the logic of events, and are becoming more and more ready to listen to propositions for the reduction of the reservations and the extinguishment of their title to such portions of the land as are not required for their own use. At 46.

. . . but the *breaking up of the reservations* and the coming of the white men with all their better modes of life necessitate a closer acquaintance with each other . . . at 47.

8B. REPORT OF THE SECRETARY OF THE INTERIOR, H. EXEC. DOC. 52ND CONG., 1ST SESS. VOL. 14 (1891-92) (EMPHASIS ADDED).

Sir: The years of the present administration have been marked to a notable degree by the expansion of the *public domain* for private settlement. European nations strive with one another to plant colonies beyond their borders, even in Africa and on distant islands; but our country is so fortunately situated that within its own boundaries are vast tracts of fertile land *heretofore unused*, on which communities can establish themselves in a single

day, and be protected by an almost instantaneous but easy and peaceful application of our system of laws and government to their new relations. . . .

OKLAHOMA—NEW PURCHASES OPENED TO SETTLEMENT.

The peaceful and efficient overtures of the government have been met in an intelligent spirit by the different Indian tribes visited by Commissions, and for valuable considerations *large portions of their reservations have been ceded for settlement.* Agreements were made by the Cherokee Commission during the previous fiscal year in the territory of Oklahoma with the Sacs and Foxes of the Mississippi, the Iowas, the Absentee Shawnees, and the Citizen Pottawatomies. These agreements were ratified by Congress at its last session. The allotments to the Indians were duly made, amounting in most cases to 160 acres each. At III.

By your proclamation dated September 18, 1891, all this domain, with required exceptions, was opened to settlement at the hour of 12 o'clock noon (central standard time), Tuesday, September 22, The lands can be acquired only by actual settlers under the homestead or town-site laws. At IV.

The agreement with these tribes made in October, 1890, and has been ratified by act of Congress. . . . As soon as the allotments are made there will be 3,000,000 acres ready upon your proclamation for settlement—equal to 18,750 homesteads of 160 acres each. At V.

A total of 27,619 Indians naturalized, and total of *acres acquired for settlement* of about 23,000,000 during the present administration alone.

He acquires a standing as complainant or otherwise in our courts on the same footing as other

citizens, except as to his allotments which the government directly guards. At V-VI.

AGREEMENTS WITH INDIANS DURING THE PRESENT ADMINISTRATION.

The following table exhibits in condensed form the results of the successful labors of the various commissions negotiating with the Indians since the commencement of the present Administration, with dates of agreements and a summary of lands purchased in Oklahoma. At VII.

HOMESTEAD SETTLERS.

The allotment law, commonly known as the *Dawes bill*, has secured for its author the praise of all interested in the welfare of the Indians. It has been accepted as the very best means of solving the Indian problem, and it is now, as has been pointed out in the earlier part of this report, receiving an administration, chiefly by written consent and agreement of the Indians, that promises to develop rapidly its benefits for allottees. At XXXV.

In a previous portion of this report it has been said that the allotment bill, commonly styled the "*Dawes bill*," whereby, through the effect of allotments, citizenship is conferred upon the allottee, has had general recognition and approval. We should not now interfere with its principal provisions or defeat any of its beneficient effects. Its purpose is to change the Indians from the state of wardship to citizenship. This process has been going on for many years, and with increased force from year to year. There are no facts furnished upon which it can be asserted that the results of this policy are injurious to the Indians, or threatening to become so, while there is abundant evidence that severance of the tribal relations, the establish-

ment of the Indian upon his own property, and the *opening of his great reservations* to white settlement have been conducive to the welfare of all concerned. At XXXVIII.

INDIAN CESSIONS AND INDIAN COMMISSIONS.

The public land transferred from uselessness to cultivation through treaties made between the Indians and the United States has been acquired by the effective agency of various commissions, some of which are still in the field. At XLII.

COLVILLE RESERVATION.

. . . in the state of Washington, to *negotiate* with the bands of Indians on the Colville Indian Reservation, in Washington, for the *cession* of such portion of the reservation as the Indians may be willing to dispose of, that the same may be opened to white settlement. At LI.

Some allotments are being made on the ceded portion of the great Sioux Reservation, . . . at LVII-LVIII.

9A. REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS (1892) (EMPHASIS ADDED).

Of course it is possible to continue the present reservation system and the exercise of guardianship over these people in the future as in the past for an indefinite period to come. The objections to this, however, are many and vital. The agency and reservation system has possibly accomplished some good in the past, and it has, at present, the possibility of benefit during the transition period, but certainly no wise man who understands the situation would venture even to suggest that the systems should be made permanent. At 5.

The power of the agent in cases where land has been allotted—as, for instance among the Sissetons, the Yanktons, the Nez Perces, and elsewhere—is very limited indeed. Those under him are no longer his subjects, but citizens of the United States. He can not maintain an Indian police force or exercise any of the autocratic power to which he was accustomed when they were still merely wards of the nation. He is agent, therefore, in large part only in name, having the shadow of his office rather than its substance. To entirely discontinue the agency, however, and leave the people who have so long been accustomed to the paternal guidance to their own resources would, in many cases, work great hardship. . . .

By placing the superintendent of the school in charge of affairs, transferring to him something of the duties that have devolved hitherto upon the agent, and constituting him their chief counselor, director, and leader, the Indians would be spared many of the evils that might result from too hasty an abolition of the agency system. At the same time there would be the doing away of the agency proper . . . at 9-10.

COMMISSIONS AND NEGOTIATIONS FOR REDUCTION OF RESERVATIONS.

Pyramid Lake Reservation, Nev. At 74.

Colville Reservation, Wash.—The agreement negotiated by this commission, to which reference was made in my last annual report, was transmitted to Congress at the beginning of the last session, accompanied by the draft of a bill to ratify the same, notwithstanding the fact that certain of the provisions of the agreement were somewhat unsatisfactory. . . .

In reporting upon the bill the Senate Committee on Indian Affairs (Senate Report 664, Fifty-second Congress, first session) took the ground that as this reservation was established by executive order, it could be restored without the consent of the Indians. . . .

Upon that ground Congress, instead of ratifying or rejecting the agreement, passed an act vacating and restoring to the public domain that portion of the reservation which the Indians had agreed to sell, the lands so vacated and restored to be opened to settlement and entry by proclamation of the President. The act provides that the net proceeds of the lands shall be set apart in the Treasury of the United States, subject to further appropriation by Congress for public use, but until so otherwise appropriated shall be subject to expenditure by the Secretary of the Interior in the building of schoolhouses, the maintenance of schools for the Indians, the payment of such part of the local taxation as may be properly applied to the lands allotted to such Indians, and in such other ways as he may deem proper for the promotion of education, civilization, and self-support among said Indians. The act became a law without the approval of the President. . . .

It is a matter of regret that this new position was not taken by Congress before the negotiations were authorized, instead of after the Indians had given their consent to the restoration of lands upon terms and conditions which have been wholly ignored in the act. The Indians were thus led to believe that their consent was necessary and that they could dictate the terms, and may feel aggrieved because the negotiations have been repudiated and their rights denied. At 76.

Another reason for the increase of business is the *breaking up of reservations* and the allotment of lands. During the past three years *more than 24,000,000 acres of Indian lands* have been *restored to the public domain*, and the amount of office work involved in preparing instructions for commissions, examining their accounts, and reporting upon their labors, as well as in allotting lands, has been very great. At 136.

REPORT OF SISSETON AGENCY.

The Reservation and Indians.—The Sisseton and Wahpetons no longer hold their land in common, having taken allotments in severalty, and on April 15 of the present year *this reservation was thrown open for settlement under the homestead law*, . . . At 469.

9B. REPORT OF THE SECRETARY OF INTERIOR, H. EXEC. DOC. 52ND CONG., 2D SESS. VOL. 12 (1892-93) (EMPHASIS ADDED).

Large areas of land held in reserve for indian purposes have been restored to the public domain. Agreements negotiated with fourteen indian tribes have provided for restoration to the public domain of nearly 26,000,000 acres, and a great bulk of this vast property has already been opened to public settlement. Other agreements negotiated are pending in Congress, and when ratified will add 10,000,000 acres at least for the same purpose. . . .

As a part of the work of reduction of indian reservations, 9,000,000 acres of the lands formerly occupied by the great Sioux Nation of indians in North and South Dakota have been opened as public domain, . . .

The same process of reduction of indian reservations is in progress in other sections of the country,

where large areas of land are yet reserved for Indian occupancy. At VII.

RESERVATIONS AND TRIBES BROKEN UP.

The reservation system and the continuance of tribal relations have been *broken* to such a degree that what remains of these obstacles to the Indian's progress is light and easily removed. *The reservations have been purchased and converted into settlements after due allotments to the Indians* in sufficient quantities to enable them each to have a farm, and this, with a constant suppression of the influence attempted to be exercised by chiefs or head men, has developed among these people a sense of the importance of the individual, an appreciation of his power to take care of himself and of the necessity that it should be exercised. At VIII.

One grand result of the purchases of indian lands has been the establishment of the territory of Oklahoma. . . .

There have been negotiated agreements with Indians for the purchase of at least 10,000,000 acres, to be added to this territory, the most recent being that of the Kiowas and the most important that for the Cherokee Strip. At IX.

Since the 4th of March, 1889, more than 24,000,000 acres of Indian lands, released by the Indians of their right of occupancy, have been restored to the public domain and opened to settlements, to become the homes of pioneer settlers. In addition, a number of agreements have been negotiated which, when ratified will swell the total area to over 30,000,000 acres of land, heretofore reserved and uncultivated, made available for productive use. During the same time 12,273 allotments in severalty have been made to Indians and 7,248 patents have been issued and

delivered to Indian allottees, and others are in course of preparation. . . .

The negotiations for relinquishments of portions of reservations and allotments of land have involved many delicate questions and a great amount of work by the department and the indian bureau. At XXXIII.

NEGOTIATIONS WITH THE INDIANS.

Important negotiations were conducted and in progress with Indian tribes during the past fiscal year, and others have been recently inaugurated under provisions of law providing therefor, which are briefly referred to as follows: . . . At XXXIX.

SHOSONE INDIAN COMMISSION.

The Department has been for some time in possession of information to the effect that the indians occupying the Shoshone or Wind River Reservation, Wyo., desired to take their lands by allotment and dispose of a portion of their reservation to the United States. The whites looking to the development of that State were anxious that negotiations be opened with the indians for the surrender of a portion of their reservation. At XLII.

COLVILLE COMMISSION.

Mark A. Fullerton, of Colfax, Oregon; William H. H. Dufur, of Dufur, Oregon, and James F. Payne, of Alma, N. C., were appointed as commissioners to determine the correct location of the northern line of the Warm Springs Reservation in Oregon, and also to negotiate with the various bands of Indians accupying the Colville Reservation, Wash., for the surrender of such portion thereof as they might choose to dispose of. Both duties were discharged